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QUESTIONS PRESENTED

1. Whether the failure of a school district, which was segregated by law, to implement an effective desegregation plan in the face of increasing residential segregation can be excused on the ground that such residential segregation has complicated the task of desegregating the schools.

2. Whether a court supervising compliance of a former *de jure* segregated school district with a desegregation decree designed to eliminate the vestiges of a long history of segregation is barred from retaining ongoing jurisdiction to enforce the decree over one area of school district operations as to which the school district has been in compliance despite the school district's perpetuation of a racially discriminatory system in other, related areas of its operations.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES v

INTEREST OF *AMICI CURIAE* 1

INTRODUCTION 3

SUMMARY OF ARGUMENT 6

ARGUMENT 8

I. DCSS'S OWN INABILITY TO IMPLEMENT AN EFFECTIVE PLAN OF SCHOOL DESEGREGATION DURING A PERIOD OF INCREASING RESIDENTIAL SEGREGATION CANNOT BE INVOKED TO REMOVE JUDICIAL SUPERVISION OVER DCSS TO ENSURE THAT IT FULFILLS ITS CONSTITUTIONAL DUTY TO DESEGREGATE IN THE AREA OF STUDENT ASSIGNMENT 8

II. EFFECTIVE DESEGREGATION MUST BE ACCOMPLISHED SIMULTANEOUSLY FOR A SUBSTANTIAL PERIOD OF YEARS IN ALL MAJOR AREAS OF SCHOOL SYSTEM OPERATIONS BEFORE A FORMER *DE JURE* SEGREGATED SCHOOL SYSTEM SUCH AS DCSS SHOULD BE RELEASED FROM JUDICIAL SUPERVISION 20

CONCLUSION 27

APPENDIX: School Desegregation:
A Social Science Statement 1a

TABLE OF AUTHORITIES

Cases ***Page***

Alexander v. Holmes County Bd. of Educ., 396 U.S. 19 (1969) 21

Armour v. Nix, No. 16,708 (N.D. Ga. Sept. 24, 1979), *aff'd mem.*, 446 U.S. 930 (1980) 12, 17

Armstrong v. O'Connell, 463 F. Supp. 1295 (E.D. Wisc. 1979) 17

Board of Educ. of Oklahoma City v. Dowell, 111 S. Ct. 630 (1991) 22, 23

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Bradley v. School Bd. of the City of Richmond, Virginia, 382 U.S. 103 (1965) 22

Brown v. Board of Educ., 347 U.S. 483 (1954) ("*Brown I*") . . . . . *passim*

Brown v. Board of Educ., 349 U.S. 294 (1955) ("*Brown II*") 6, 14, 21

Columbus Bd. of Educ. v. Penick, 443 U.S. 449 (1979) 19

Cooper v. Aaron, 358 U.S. 1 19

Page

Davis v. Board of School Comm'rs of Mobile County, 402 U.S. 33 (1971) 13

Dayton Bd. of Educ. v. Brinkman, 443 U.S. 526 (1979) 19, 22

Evans v. Buchanan, 393 F. Supp. 428 (D. Del.), *aff'd*, 423 U.S. 963 (1975) 17

Green v. County School Bd., 391 U.S. 430 (1968) ..... *passim*

Hart v. Community School Bd. of Brooklyn, 383 F. Supp. 699 (E.D.N.Y. 1974), *aff'd*, 512 F.2d 37 (2d Cir. 1975) 17

Keyes v. School Dist. No. 1, Denver, Colo., 413 U.S. 189 (1973) 16, 19, 21

Keyes v. School Dist. No. 1, Denver, Colo., 895 F.2d 659 (10th Cir. 1990), *cert. denied*, 111 S. Ct. 951 (1991) 23

Little Rock School Dist. v. Pulaski City Special School Dist., 716 F. Supp. 1162 (E.D. Ark. 1989) .. 23

Milliken v. Bradley, 433 U.S. 267 (1977) ("*Milliken II*") 16, 21, 22

Monroe v. Board of Comm'rs of the City of Jackson, 391 U.S. 450 (1968) 12-13

Morgan v. Burke, 926 F.2d 86 (1st Cir. 1991) 24

Page

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Morgan v. Nucci, 831 F.2d 313 (1st Cir. 1987) 24, 26

NAACP v. Lansing Bd. of Educ., 559 F.2d 1042 (6th Cir.), *cert. denied*, 434 U.S. 997 (1977) 17

Pasadena City Bd. of Educ. v. Spangler, 427 U.S. 424 (1976) 18, 19, 24, 25

Penick v. Columbus Bd. of Educ., 429 F. Supp. 229 (S.D. Ohio 1977), *aff'd in part and remanded in part*, 443 U.S. 449 (1979) 17

Raney v. Board of Educ., 391 U.S. 443 (1968) 21, 26

Swann v. Charlotte-Mecklenburg Bd. of Educ., 401 U.S. 1 (1971) 13, 14, 16, 20, 21

United States v. Bd. of School Comm'ners, 573 F.2d 400 (7th Cir. 1978) 17

United States v. Charleston County School Dist., 738 F. Supp. 1513 (D.S.C. 1990) 23

United States v. Montogomery County Bd. of Educ., 395 U.S. 225 (1969) 22

United States v. Overton, 834 F.2d 1171 (5th Cir. 1987) 24

Page

United States v. State of Mississippi,
725 F. Supp. 307 (D. Miss. 1989) 23

United States v. Yonkers Bd. of Educ., 624
F. Supp. 1276 (S.D.N.Y. 1985), *aff'd*,
837 F.2d 1181 (2d Cir. 1987), *cert. denied*,
486 U.S. 1055 (1988) 17

Vaughns v. Board of Educ. of Prince George's County,
742 F. Supp. 1275 (D. Md. 1990) 23

Vetterli v. United States District Court,
435 U.S. 1304 (Rehnquist, Circuit Justice 1978) 18

Constitutional Provision

U.S. CONST., AMEND. XIV
(Equal Protection Clause) . . . . . *passim*

Miscellaneous

ASSESSMENT OF CURRENT KNOWLEDGE ABOUT
THE EFFECTIVENESS OF SCHOOL DESEGREGATION
STRATEGIES (Hawley, *et al.*, ed. 1981) 15, 25

Bryk, Lee & Smith, *High School Organization and its
Effects on Teachers and Students*, in
1 CHOICE AND CONTROL IN AMERICAN EDUCATION
(Clune & Witte eds. 1990) 20

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7 HUMAN RIGHTS 10 (1978) 19

Page

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Attitudes Toward the Public Schools*, PHI DELTA
KAPPAN, September 1990, at 44 15

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on the Self-Evaluation and Achievement
Orientation of Minority Children*,
42 LAW AND CONTEMPORARY PROBLEMS 57
(1978) 19

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SCHOOLING (Washington, D.C.: Dep't of Health,
Education and Welfare 1976) 21

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(1979) 15

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REAL ESTATE BROKERS (1969) 15

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AND NATIONAL POLICY (1978) 16

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Segregation: A Social Science Statement*,
in SCHOOL DESEGREGATION: PAST, PRESENT
AND FUTURE (1980) 15, 16

ORFIELD, TOWARD A STRATEGY FOR URBAN
INTEGRATION (1981) 15

Page

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Pearce, *Deciphering the Dynamics of Segregation: The Role of Schools in the Housing Choice Process*, 13 THE URBAN REVIEW 85 (1981) 15

PEARCE, CRAIN & FARLEY, LESSONS NOT LOST: THE IMPACT OF SCHOOL DESEGREGATION ON THE RACIAL ECOLOGY OF LARGE AMERICAN CENTRAL CITIES (1990) 16

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UNITED STATES COMMISSION ON CIVIL RIGHTS, RACIAL ISOLATION IN THE PUBLIC SCHOOLS (1967) 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 89-1290

ROBERT R. FREEMAN, *et al.*,
Petitioners,

v.

WILLIE EUGENE PITTS, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF OF THE NAACP, DEKALB COUNTY, GEORGIA, BRANCH OF THE NAACP, AMERICAN JEWISH COMMITTEE, CHILDREN'S DEFENSE FUND, FUND FOR AN OPEN SOCIETY, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND, AND SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

INTEREST OF *AMICI CURIAE*

Amici curiae are organizations representing individuals throughout the nation who share a critical interest in desegregation of public school systems.[1]

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[1] The parties have consented to the filing of this brief. Copies of the letters of consent from the parties have been filed with the Clerk of the Court.

The *National Association for the Advancement of Colored People* ("NAACP") is a non-profit membership corporation with substantial numbers of members nationwide. One of the principal goals of the NAACP is to insure the educational, social and economic equality of minority group citizens. The NAACP has been at the forefront of school desegregation litigation since *Brown v. Board of Educ.*, 347 U.S. 483 (1954). The NAACP has chartered affiliates in the State of Georgia, including *amicus* DeKalb County, Georgia, Branch of the NAACP, and in all other states.

The *American Jewish Committee* ("AJC"), founded in 1906, seeks to protect the security and constitutional rights of Jews in America through the preservation of the rights of all Americans. AJC has been concerned with the inequities of segregated schooling since the late 1940s, when it sponsored research on the effects of *de jure* segregation that was relied upon by the *Brown* Court. *See Brown*, 347 U.S. at 411 n.11.

The *Children's Defense Fund* conducts research, public education and advocacy for America's children, especially its poor, minority and handicapped children. Quality of education is one of its primary concerns.

The *Fund for an Open Society*, founded in 1975, is a non-profit mortgage fund which seeks to promote integrated housing through lower cost mortgages to whites and minorities, and to help solve the problems of segregated schools by breaking down walls of residential segregation.

The *Mexican American Legal Defense and Educational Fund* ("MALDEF") is a national civil rights organization established in 1967 to secure, through litigation and education, the civil rights of Hispanics living in the United States. MALDEF currently represents Hispanics in 20 desegregation cases.

The *Puerto Rican Legal Defense and Education Fund*, which represents Latinos in several school desegregation cases, is a national civil rights organization dedicated to protecting and furthering the rights of Puerto Ricans and Latinos.

The *Southern Christian Leadership Conference* ("SCLC") is a national non-profit civil and human rights organization founded by the Rev. Martin Luther King, Jr. SCLC has chartered chapters and affiliates nationwide and long has been concerned with the inequities of all aspects of school segregation.

INTRODUCTION

Schools in the DeKalb County School System ("DCSS") are segregated by race and have been segregated by race since Reconstruction. Through at least the first 15 years following *Brown v. Board of Educ.*, 347 U.S. 483 (1954) ("*Brown I*"), DCSS intentionally maintained, under color of law, a segregated school system in violation of the Equal Protection Clause of the Fourteenth Amendment.

Notwithstanding judicial supervision and repeated orders directing DCSS to implement an effective plan to desegregate its schools, DCSS's schools have remained segregated to this day. The most recent record evidence reveals that more than half of all black students in the DeKalb County schools attend schools with black populations exceeding 90 percent (Pet. App. 4a). It is undisputed that DCSS continues to segregate its faculty and staff by race, with assignments reflecting the racial identification of its schools;[2] that it expends substantially more money and

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[2] Both courts below found that the DCSS has violated judicial desegregation orders by assigning black principals, teachers and staff to predominantly black schools (J.A. 226-231; Pet. App. 4a-5a, 17a; *id.* at 48a-59a; *see* J.A. 425, 530-35; 543-44; 745-48; 751-52; 837). Although blacks comprise approximately 30 percent of administrators systemwide, the percentage of black administrators in schools in which black student populations exceed 80 percent is 60 to 63 percent (J.A. 483, 530-35).

resources on educating white students than black students;[3] and that it places its more experienced and better educated teachers in identifiably white schools to a greater degree than in identifiably black schools.[4]

Recognizing that "[a]fter twenty years of court supervision, the DCSS continues to operate racially identifiable schools" (Pet. App. 24a), the court of appeals required DCSS to take meaningful steps to achieve the result mandated by the Equal Protection Clause – a desegregated school system. The court held that DCSS had a continuing constitutional duty "to gain and maintain a desegregated student population" (*id.* at 19a), and that it "may not shirk its constitutional duties by pointing to demographic shifts occurring prior to unitary status" (*id.* at 20a). The court further held that a school district such as DCSS, the schools of which were once segregated *de jure*, may not be released from judicial supervision until it has effectively desegregated its system by simultaneously maintaining racial equality for three consecutive years in the areas of operations identified in *Green v. County School Bd.*, 391 U.S. 430 (1968) – student assignment, faculty and staff assignment, transportation, extracurricular activities, and facilities (Pet. App. 24a).

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[3] The DCSS spends, on average, $341.00 more per student in predominantly white schools than in predominantly black schools (Pet. App. 6a; *id.* at 70a). This is, in the aggregate, a substantial sum considering that DCSS is populated by almost 80,000 students, 47 percent of whom are black.

[4] In majority white elementary schools, teachers have an average of 9.79 years of teaching experience; in majority black elementary schools, teachers have an average of 5.19 years of teaching experience. In majority white high schools, teachers have an average of 8.9 years of teaching experience; in majority black high schools, teachers have an average of 4.91 years of teaching experience. In majority white elementary schools, 75.76 percent of teachers have graduate degrees; in majority black elementary schools, 52.63 percent of teachers have graduate degrees. In majority white high schools, 76.05 percent of teachers have graduate degrees; in majority black high schools, 64.32 percent of teachers have graduate degrees (Pet. App. 5a-6a; *id.* at 65a-66a).

DCSS contends that, because the increasing segregation of its students occurred at about the same time that DeKalb County was experiencing a large increase in population, including an increase in black population centered in one part of the county, it cannot be required, under the Equal Protection Clause, to desegregate its schools unless it can be shown to have caused the demographic shift. DCSS further contends that desegregation in one of the six areas of school operations identified in *Green* would entitle it to removal of judicial supervision over that area even if its school system as a whole has remained segregated.

The proper resolution of these questions turns on application of the fundamental principles articulated in this Court's seminal desegregation decisions. In *Brown I*, the Court declared that segregation of black children "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone," 347 U.S. at 494, and that "in the field of public education the doctrine of 'separate but equal' has no place" because "[s]eparate educational facilities are inherently unequal," *id.* at 495. The *Brown* Court was influenced by preliminary studies demonstrating that segregated education provides inferior opportunities to black students. *See id.* at 494 n.11. Extensive study of desegregation in the 37 years since *Brown* has produced a stable consensus among social scientists of the overwhelming value of desegregation and the danger of resegregation implicit in narrowing the ambit of judicial supervision of school systems such as DCSS. A Social Science Statement signed by more than 50 leading researchers demonstrating this consensus is appended to this Brief.

The constitutional offense identified in *Brown I* was a systematic exclusion of black students from the educational mainstream. In *Brown II*, the Court authorized the exercise of far-ranging equity powers to remedy that systematic discrimination and to dismantle *de jure* segregated school systems. *See*

Brown v. Board of Educ., 349 U.S. 294, 296 (1955). The Court did not suggest that residential segregation – a condition prevalent in American society then as well as now – would excuse a failure of a school system to rid itself of the segregation of students by race. Nor did the Court contemplate that a school district with a long history of legally-enforced segregation could sidestep judicial supervision prior to complete elimination of all aspects of racial discrimination from its schools. The positions advocated by DCSS are at odds with the principles underlying the *Brown* decisions that have guided this Court's equal protection jurisprudence for decades.

SUMMARY OF ARGUMENT

I.

Contrary to the premise underlying its argument, DCSS has never "implemented an effective plan to disestablish the former *de jure* dual school system" (Pet. Br. 20). The closing of DCSS's former *de jure* black schools in 1969 did not put an end to segregation in the DeKalb County schools. Moreover, the closure was accompanied by a "neighborhood" attendance plan and by other DCSS actions that, when demographics changed as they quickly did, invited the perpetuation of a blatantly segregated school system.

As this Court and other courts have noted, and as leading social scientists have found, residential segregation is often inextricably intertwined with school board actions that have the effect of establishing racially identifiable schools. Accordingly, as the Solicitor General has acknowledged, it may be difficult, if not impossible, in a given case to sort out precise causal elements from the interaction of residential segregation and school segregation. In any event, DCSS cannot point to demographic changes as an excuse for failing to fulfill its affirmative duty of implementing an effective desegregation plan. To the contrary, DCSS was required to take such changes

into account in fashioning a plan to eradicate racial segregation from its schools.

II.

Effective desegregation in each of the six areas of school operations identified in *Green* must be accomplished simultaneously for a period of at least three years before a former *de jure* segregated school system such as DCSS should be released from judicial supervision over any aspect of desegregation. DCSS's argument that a supervising court must relinquish jurisdiction one area at a time – with a renewed inquiry into a school district's compliance in any such area permitted only upon proof by the plaintiffs of a *new* act of intentional discrimination – has no support in the decisions of this Court.

The maintenance of a *de jure* segregated system is a constitutional wrong that infects the school system as a whole. Accordingly, this Court's desegregation decisions have properly structured relief on a systemwide basis. Moreover, as this Court and lower courts supervising desegregation plans have noted, the different areas of school system operations are interrelated, so that aspects of a desegregation plan addressed to one area may well affect the ability of the school district to achieve desegregation in other areas and in the system as a whole.

Under the approach espoused by DCSS and the district court, a school district could attain compliance in certain areas for relatively brief spans of time in the course of administration of a desegregation decree, and ultimately be discharged from court supervision despite its overall failure to achieve desegregation throughout the school system. This result is contrary to the central goal of remedying the systemwide harms caused by institutional segregation.

ARGUMENT

I. DCSS'S OWN INABILITY TO IMPLEMENT AN EFFECTIVE PLAN OF SCHOOL DESEGREGATION DURING A PERIOD OF INCREASING RESIDENTIAL SEGREGATION CANNOT BE INVOKED TO REMOVE JUDICIAL SUPERVISION OVER DCSS TO ENSURE THAT IT FULFILLS ITS CONSTITUTIONAL DUTY TO DESEGREGATE IN THE AREA OF STUDENT ASSIGNMENT.

The principal argument of DCSS proceeds from the faulty premise that it "already has implemented an effective plan to disestablish the former *de jure* dual school system" (Pet. Br. 20). The court of appeals expressly rejected this premise in concluding that "[a]fter twenty years of court supervision, the DCSS continues to operate racially identifiable schools" (Pet. App. 24a). Because this case thus involves a school district, formerly segregated *de jure*, that has *never* implemented an effective plan of desegregation, the argument that DCSS constructs on its flawed premise has no bearing on the Court's decision here.

The premise is flawed, to begin with, because the simple step of closing former *de jure* black schools in 1969 did not constitute an effective desegregation plan. As the court of appeals observed, "[f]or many years, the DCSS planned, contributed to, and directly caused racial segregation in its schools" (Pet. App. 23a). It would be naive to think that such an entrenched system could be uprooted overnight. This Court has recognized that the challenge of overcoming the long-term effects of *de jure* segregation is not one that can be satisfied by instant solutions. Thus, in *Green v. County School Bd.*, 391 U.S. 430 (1968), the Court described *Brown II* as "a call for the dismantling of well-entrenched dual systems," a call "tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful

resolution." 391 U.S. at 437. The Court went on:

> School boards . . . then operating state-compelled dual systems were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.

Id. at 437-38. Here, DCSS failed to resolve the "complex and multifaceted problems" that arose upon implementation of its initial desegregation plan in 1969. More specifically, the closing of the former *de jure* black schools did not effectively abolish the dual system because it was accompanied by the institution of a "neighborhood" attendance policy that permitted the development and perpetuation of the "segregated school system" that, as the court of appeals said, DCSS operates today (Pet. App. 4a).[5]

DCSS instituted its "neighborhood" attendance policy in September 1969. At that time, only 5.6 percent of the overall student population was black. Nevertheless, two schools had a majority of black students in 1969 and three other schools were racially identifiable as black schools.[6] Even in the initial year

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[5] The facts set forth in the text that follows demonstrate that segregation in the DeKalb County schools continued from the very outset of the neighborhood plan in 1969. Whether segregation continued at that time or reemerged within one or two years following institution of the plan is, however, irrelevant. The court of appeals held that effective desegregation for "a period of not less than three years" is necessary in each area of school system operations (Pet. App. 14a), and no one contends that anything less than three years should constitute the minimum period of compliance. Even DCSS does not appear to assert that it achieved effective desegregation in the area of student assignment for a continuous three-year period at any point during the period it has been subject to judicial supervision.

[6] The student population of Terry Mill Elementary was 76.4 percent black and that of Stoneview Elementary was 51.2 percent black. In addition, 35 percent of the students at Lithonia High School and 28 percent of the

of the "neighborhood" attendance plan, the racial identity of these schools was virtually guaranteed by the substantial concentration of black faculty and staff in those schools – despite the overall paucity of black faculty and staff in DCSS.[7]

After DCSS had identified its schools by race using discriminatory faculty and staff assignments, segregation of student assignments by race quickly followed. In the first five years of the "neighborhood" attendance plan, racial segregation of students grew markedly in DeKalb County schools. By 1974, the overall student population was only 15 percent black, but in 12 elementary schools and two high schools the majority of students were black.[8] The trend of increasing segregation has continued to the point where 50 percent of all black students attend schools in which more than 90 percent of the students are black (Pet. App. 3a-4a). Five of the 22 DCSS high schools have student bodies that are more than 92 percent black (J.A. 505-08).

The first five years under the "neighborhood" attendance plan were characterized by actions on the part of DCSS that contributed to the perpetuation and exacerbation of the

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students at both Hooper Alexander Elementary and Jim Cherry Elementary were black (J.A. 505-08).

[7] In 1969, 6 percent of DCSS teachers were black. At Hooper Alexander Elementary, however, where 28 percent of the student body was black, 22 percent of the teachers were black. At Terry Mill Elementary – where 76.4 percent of students were black – 32 percent of teachers were black. In numerous schools where the student body was almost exclusively white, there were no black teachers (J.A. 548).

[8] These schools included Tilson (98.9 percent); Leslie J. Steele (98.7 percent); Gordon (97.4 percent); Terry Mill (97.2 percent); Toney (92.1 percent); Sky Haven (79.8 percent); Gresham Park (79.2 percent); Hooper Alexander (77.5 percent); Clifton (76.7 percent); Kelly Lane (75.5 percent); Flat Shoals (67.5 percent); Walker (60.3 percent); and Meadowview (57.9 percent) (J.A. 505-08).

segregation of students by race in the DeKalb County schools.[9] Thus, in 1976, the district court found that DCSS had drawn attendance zone lines in such a way as to increase segregation in some of its schools.[10] Between 1976 and 1985, DCSS cemented the segregated status of its schools: the number of schools in which at least 90 percent of the students were black increased from eight in 1976 to 18 in 1985 and the number of schools in which at least 50 percent of the students were black increased from 25 in 1976 to 47 in 1985 (J.A. 260-380).

Quite clearly, then, the "neighborhood" attendance plan never effectively desegregated DCSS schools. To the contrary, the plan had the effect of increasing racial segregation in the system over time to a startling degree.[11]

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[9] The claim by DCSS that the plaintiff class is somehow responsible for the segregative actions taken by DCSS because "respondents themselves took little or no initiative to insist on additional remedial efforts" (Pet. Br. 35), is consistent with DCSS's efforts to avoid taking responsibility for its discriminatory actions. The duty to obey the law rests with DCSS independent of any actions taken by respondents.

[10] The district court found that "the redrawing of elementary school lines in southwest DeKalb had some effect upon the perpetuation of a dual system in the county" (J.A. 89). The court further found that DCSS could not adequately explain certain attendance zone changes that had the effect of increasing segregation (J.A. 90-91). DCSS did not challenge these findings on appeal.

In addition, between 1969 and 1975, DCSS opened five of the eight elementary schools where currently at least 95 percent of the students are white; in 1975, these five schools had a total of four black students (J.A. 272, 311, 316, 337, 353). During that period, DCSS opened three of the 18 schools in which more than 90 percent of the students are black (J.A. 274, 282, 333). Of 14 elementary schools opened by DCSS during that period, eight have students bodies that are either almost completely white or almost completely black.

[11] Other programs instituted by DCSS, including its magnet school program and its "majority to minority" ("M-to-M") transfer program, have not succeeded in effectively desegregating student assignments. The magnet

The effect of the neighborhood attendance plan in perpetuating segregation was exacerbated by demographic changes in DeKalb County, particularly the growth in the number of black residents, who were increasingly concentrated in one end of the county. DCSS, proceeding on its flawed premise that it eliminated all the effects of decades of *de jure* segregation by a single blow in 1969, would make of the resulting increase in residential segregation in the county a reason for the continued segregation of the county schools for which it is not accountable. But that argument falls with the flawed premise. DCSS, never having achieved desegregation, is no different from any school district that has had to confront the unhappy fact of residential racial segregation in moving from a school system in which by legal command students were segregated by race to a unitary school system.[12]

Certainly it is beyond question that a school district whose students were previously segregated by law does not create a unitary school system merely by providing for a neighborhood attendance plan when it knows that the neighborhoods from which its several schools will draw students are identifiably black or white. In *Monroe v. Board of Comm'rs of the City of Jackson*,

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school program is ineffective, involving few students (J.A. 594). The M-to-M program results in black students transferring to schools where white students are in the majority; white students do not transfer to schools where they are in the minority. *Cf. Monroe v. Board of Comm'rs of the City of Jackson*, 391 U.S. 450, 459 (1968). Only 4 percent of elementary students and 9 percent of high school students utilize the M-to-M program, and those students are almost exclusively black (J.A. 593).

[12] DeKalb County is, and has been, residentially segregated by race. As Judge O'Kelly, the district judge below, observed in a case involving the Atlanta metropolitan area as a whole, "it is obvious to the most casual observer that integrated housing patterns do not prevail in the Atlanta metropolitan area. It is also patently obvious that there is an interface between housing patterns and school populations." *Armour v. Nix*, No. 16,708, slip op. at 32 (N.D. Ga. Sept. 24, 1979) (three-judge court), *aff'd mem.*, 446 U.S. 930 (1980).

391 U.S. 450, 455-57 (1968), a majority of black residents lived in one area and the Court held that a plan based on "natural boundaries" was "plainly inadequate":

> Because the homes of Negro children are concentrated in certain areas of the city, a plan of unitary zoning, even if prepared without consideration of race, will result in a concentration of Negro children in the zones of heretofore "Negro" schools and white children in the zones of heretofore "white" schools.

Id. at 458 (quoting lower court); *see Davis v. Board of School Comm'rs of Mobile County*, 402 U.S. 33, 37 (1971) ("'neighborhood school zoning'. . . is not the only constitutionally permissible remedy; nor is it *per se* adequate to meet the remedial responsibilities of local boards"); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 30 (1971) ("[d]esegregation plans cannot be limited to the walk-in school"). The simple expedient of a "neighborhood" attendance plan, like a "freedom-of-choice" plan, is not a sacred talisman; "if it fails to undo segregation, other means must be used to achieve this end." *Green*, 391 U.S. at 440 (citation omitted).[13]

Moreover, this Court has recognized from the outset that changes in demographic patterns are factors that an effective desegregation plan must contend with, not an excuse for continued segregation. In *Swann*, the Court pointed out that

> [the] process [of converting from the state-enforced discrimination of racially separate school systems] has been rendered more difficult by changes since 1954 in the structure and patterns of communities, the growth of student populations, movement of families, and other changes, some

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[13] The mere fact that a plan may be racially neutral does not establish that it is effective; more race-conscious remedial plans may be required. *Swann*, 402 U.S. at 22-25.

of which had marked impact on school planning, sometimes neutralizing or negating remedial action before it was fully implemented.

402 U.S. at 14 (footnote omitted). The Court thus made clear that the desegregating school district must deal not just with demographics as they were when it began to desegregate but also with changing demographics such as those the DeKalb County district and other districts have experienced. The changing demographics do not absolve a school board of its obligation to dismantle a racially discriminatory school system; on the contrary, such changes must be taken into consideration in fashioning an effective desegregation plan.

The mere fact that demographic changes may, on one level, be attributable to voluntary decisions on the part of families is of no moment. In *Green*, the perpetuation of the dual system resulted from parents' voluntary enrollment decisions under the school board's "freedom-of-choice" plan. Nevertheless, the Court refused to relieve the school board of its constitutional duty, noting that "[r]ather than further the dismantling of the dual system, the plan has operated simply to burden children and their parents with a responsibility which *Brown II* placed squarely on the School Board." 391 U.S. at 441-42.

As this Court has recognized, school board actions and residential segregation are often inextricably intertwined. Thus, the Court noted in *Swann* that school board actions that influence the racial composition of the student body may themselves "promote segregated residential patterns which . . . lock the school system into the mold of separation of the races." 402 U.S. at 21. This is the case because "a family looking for housing is concerned with the schools that its children will attend [and for] many families the racial composition of a

school is among its most important qualities or characteristics."[14] A Gallup poll taken in 1990 revealed that almost half the population views racial composition of the student body of prospective schools to be "very important" or "fairly important" in the choice of a local school.[15] "Segregated schools . . . make it possible for agents and consumers to sort out neighborhoods in terms of race, and guide housing decisions accordingly."[16]

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[14] Taeuber, *Housing, Schools and Incremental Segregative Effects*, in 441 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 157 (1979).

[15] Elam, *The 22nd Annual Gallup Poll of the Public's Attitudes Toward the Public Schools*, PHI DELTA KAPPAN, September 1990, at 44-45. Gallup opinion polls consistently show that high numbers of white Southern parents object to sending their children to schools with student bodies that are 50 percent black. *See* GALLUP, THE GALLUP POLL: PUBLIC OPINION, 1978 at 217 (1979); GALLUP, THE GALLUP POLL: 1935-1971 at 2248 (1972).

[16] Pearce, *Deciphering the Dynamics of Segregation: The Role of Schools in the Housing Choice Process*, 13 THE URBAN REVIEW 85, 86 (1981); *see* HELPER, RACIAL POLICIES AND PRACTICES OF REAL ESTATE BROKERS 80 (1969) ("People fear that the schools will become undesirable – this, say respondents, is the *main* reason white people do not want Negroes to come to their area") (emphasis in original). On the other hand, a stable desegregated school system can diminish residential segregation over time. When a school district is desegregated, there is no pressure for whites with young children to move out of racially mixed neighborhoods and it is less likely that real estate agents will engage in racial steering to segregate neighborhoods. *See* I ASSESSMENT OF CURRENT KNOWLEDGE ABOUT THE EFFECTIVENESS OF SCHOOL DESEGREGATION STRATEGIES 51-60 (Hawley, *et al.*, ed. 1981). Once schools are no longer identified as white or black, racial barriers in housing are lowered. *See* PEARCE, BREAKING DOWN BARRIERS: NEW EVIDENCE ON THE IMPACT OF METROPOLITAN DESEGREGATION IN HOUSING PATTERNS (1980); ORFIELD, TOWARD A STRATEGY FOR URBAN INTEGRATION (1981); PEARCE, CRAIN & FARLEY, LESSONS NOT LOST: THE IMPACT OF SCHOOL DESEGREGATION ON THE RACIAL ECOLOGY OF LARGE AMERICAN CENTRAL CITIES (1990) (study appended to Brief of the American Jewish Committee, *et al.*, as *Amici Curiae* in *Board of Educ. v. Dowell*, 111 S. Ct. 630 (1990)).

Residential segregation can be exacerbated not only by segregation in student assignment but also by other school board actions, such as racial segregation in faculty and staff assignment, that have the effect of establishing racially identifiable schools:

> [T]he use of mobile classrooms, the drafting of student transfer policies, the transportation of students, and the assignment of faculty and staff, on racially identifiable bases, have the clear effect of earmarking schools according to their racial composition, and this, in turn, together with the elements of student assignment and school construction, may have a profound reciprocal effect on the racial composition of residential neighborhoods within a metropolitan area, thereby causing further racial concentration within the schools.

Keyes v. School Dist. No. 1, Denver, Colo., 413 U.S. 189, 202 (1973).[17]

Many of the lower courts that have administered desegregation decrees have agreed with these observations.[18] As one such court has noted: "[e]mployment, education and housing discrimination foster each other in the United States;

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[17] Social scientists agree that such actions by a school district cause residential segregation. *See, e.g.*, Orfield, *School Segregation and Residential Segregation: A Social Science Statement*, in SCHOOL DESEGREGATION: PAST, PRESENT AND FUTURE 235-36 (1980); ORFIELD, MUST WE BUS? SEGREGATED SCHOOLS AND NATIONAL POLICY 322, 369 (1978) (schools in Indianapolis and Cleveland "racially labeled" by faculty assignments); UNITED STATES COMMISSION ON CIVIL RIGHTS, RACIAL ISOLATION IN THE PUBLIC SCHOOLS 67 (1967); Taeuber, *Housing, Schools, and Incremental Segregative Effects*, 441 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 157, 164 (1979).

[18] The Court has often taken into account the practical experience of the lower courts in this area. *See, e.g., Milliken v. Bradley*, 433 U.S. 267, 283-87 (1977) ("*Milliken II*"); *Swann*, 402 U.S. at 6.

the effects of one are causative of the others; they are interdependent phenomena."[19] For this reason, as the Solicitor General has pointed out, attempting to parse precise causal elements from the interaction of residential segregation and school segregation would likely prove to be a futile exercise.[20] In any event, the question whether particular actions by DCSS "caused" residential segregation in DeKalb County is not before the Court for the simple reason that DCSS has never implemented an effective desegregation plan.

This case is therefore functionally identical to one in which a school board must dismantle a former *de jure* segregated

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[19] *Bradley v. School Bd. of the City of Richmond*, 338 F. Supp. 67, 195 (E.D. Va. 1972), *rev'd on other grounds*, 462 F.2d 1058 (4th Cir. 1972), *aff'd by an equally divided Court sub nom. School Bd. of Richmond, Va. v. State Bd. of Educ. of Va.*, 412 U.S. 92 (1973); *Armour v. Nix*, No. 16,708, slip op. at 15 (Sept. 24, 1979) ("[i]t need not be reiterated that racial designation of the school in a given area tends to designate the race of the neighborhood"), *aff'd mem.*, 446 U.S. 930 (1980); *Penick v. Columbus Bd. of Educ.*, 429 F. Supp. 229, 259 (S.D. Ohio 1977) (the interaction of student assignments and residential choice is a "segregative snowball"), *aff'd in part and remanded in part*, 443 U.S. 449 (1979); *United States v. Yonkers Bd. of Educ.*, 624 F. Supp. 1276, 1526 (S.D.N.Y. 1985), *aff'd*, 837 F.2d 1181 (2d Cir. 1987), *cert. denied*, 486 U.S. 1055 (1988); *United States v. Board of School Comm'ners*, 573 F.2d 400, 408-09 n.20 (7th Cir. 1978); *NAACP v. Lansing Bd. of Educ.*, 559 F.2d 1042, 1049 n.9 (6th Cir.), *cert. denied*, 434 U.S. 997 (1977); *Evans v. Buchanan*, 393 F. Supp. 428, 436-37 (D. Del.), *aff'd*, 423 U.S. 963 (1975); *Hart v. Community School Bd. of Brooklyn*, 383 F. Supp. 699, 706 (E.D.N.Y. 1974) (Weinstein, J.), *aff'd*, 512 F.2d 37 (2d Cir. 1975); *Morgan v. Hennigan*, 379 F. Supp. 410, 470 (D. Mass.), *aff'd sub nom. Morgan v. Kerrigan*, 509 F.2d 580 (1st Cir. 1974), *cert. denied*, 421 U.S. 963 (1975); *Armstrong v. O'Connell*, 463 F. Supp. 1295, 1308 (E.D. Wisc. 1979).

[20] *See* U.S. Brief 14 n.7 (citation omitted) ("an inquiry in every desegregation case into the 'unknown and perhaps unknowable factors' that cause residential imbalances promises the daunting, often unedifying, and – for many school districts – prohibitively expensive spectacle of a parade of social science experts"). Although the United States seems to be concerned only with the costs of such an inquiry to school districts, *amici* submit that the burden of such an inquiry on plaintiffs would be even more unbearable.

system in a community that is, from the outset, characterized by residential segregation. And as we have seen and as must be apparent, segregation of neighborhoods is a problem to be confronted, not a justification for continued segregation of the schools.[21]

The decision in *Pasadena City Bd. of Educ. v. Spangler*, 427 U.S. 424 (1976), is not to the contrary. In *Spangler*, the Court struck down a condition imposed by the district court that "at least during my lifetime there would be no majority of any minority in any school in Pasadena," *id.* at 433, a condition that required "annual readjustment of attendance zones," *id.* at 435. Chief Justice Rehnquist, the author of the Court's opinion in *Spangler*, subsequently noted that the essential objection of the Court to the district court's order was its "obligation to annually reassign students." *Vetterli v. United States Dist. Court*, 435 U.S. 1304, 1308 (1978) (Rehnquist, Circuit Justice). Here, of course, neither the court of appeals nor plaintiffs seek to impose any such obligation on DCSS. Rather, plaintiffs here seek merely the implementation of an effective desegregation plan, a step that DCSS, more than 37 years after *Brown*, has not yet proved willing or able to take. *Spangler*, condemning a judicially mandated kind of fine-tuning that is remote from the facts of this case, does not relieve DCSS of its affirmative duty finally to implement an effective plan to eliminate racial segregation in its schools.[22]

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[21] The Solicitor General agrees with this proposition. *See* U.S. Br. 14 n.7 (citation omitted) ("existing residential disparities should be taken into account 'in fashioning a remedy' at the outset of a case to desegregate a school system").

[22] Year-by-year adjustment of racial composition is not warranted "once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system." *Spangler*, 427 U.S. at 436 (citation omitted). Here, however, the DCSS has never "implemented a racially neutral attendance pattern," as *Spangler* requires, and the affirmative duty to desegregate has not been discharged.

At bottom, the harms sought to be remedied by *Brown* are identical whether existing segregation results from direct operation of law or from the continued failure of a school system to overcome past discrimination. *See Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 456-57 (1979); *Keyes*, 413 U.S. at 210-11; *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 420 (1977). In either case, black students are stigmatized by racially separate and thus inferior education.[23] The fact that substantial time has passed since *Brown* should heighten, rather than lessen, the duties placed upon DCSS to comply with the Constitution. The obligation of DCSS, "which ha[s] not been satisfied, [is] to 'come forward with a plan that promises realistically to work . . . *now* . . . until it is clear that state-imposed segregation has been completely removed.'" *Penick*, 443 U.S. at 459 (emphasis in original; citation omitted); *see Green*, 391 U.S. at 437-38.[24]

See id. at 437.

[23] *See generally* WEINBERG, MINORITY STUDENTS: A RESEARCH APPRAISAL 159 (1977); Epps, *The Impact of School Desegregation on the Self-Evaluation and Achievement Orientation of Minority Children*, 42 LAW AND CONTEMPORARY PROBLEMS 57 (1978); Coleman, *New Incentives for Desegregation*, 7 HUMAN RIGHTS 10, 15 (1978) (critical of desegregation remedies but recognizing that it is "essential" that "if a child is in an all-black school, it should be because he wants to be there and his parents want him to be there, *not* because it is the only school that he has a reasonable chance to attend") (emphasis in original).

[24] Of course, compliance with the Constitution could require DCSS to take difficult actions that "may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some." *Swann*, 402 U.S. at 28. The Court should not be reluctant to insist upon full compliance with *Brown* merely because of the difficulties inherent in some remedies that may be appropriate. *See generally Cooper v. Aaron*, 358 U.S. 1 (1958).

II. EFFECTIVE DESEGREGATION MUST BE ACCOMPLISHED SIMULTANEOUSLY FOR A SUBSTANTIAL PERIOD OF YEARS IN ALL MAJOR AREAS OF SCHOOL SYSTEM OPERATIONS BEFORE A FORMER *DE JURE* SEGREGATED SCHOOL SYSTEM SUCH AS DCSS SHOULD BE RELEASED FROM JUDICIAL SUPERVISION.

DCSS argues that it should be permitted to dismantle its segregated school system one piece at a time over more than two decades, sequentially foreclosing judicial supervision, without regard to whether it is implementing an effective plan for desegregating the school system as a whole. If the Court correctly resolves the first question presented, DCSS's claim will be inessential to an affirmance of the court of appeals and need not be resolved. For what we have tried to demonstrate in our discussion of the first question is that DCSS has never achieved desegregation in respect of student assignments – far from it. And despite DCSS's contrary suggestion (Pet. Br. 20), the court of appeals did not believe that it had. There is thus no need to rely on DCSS's admitted continuation of discriminatory faculty and staff assignments and allocation of resources as a reason for continuing judicial supervision of student assignments. But, if there were any such need, it is clear from this Court's decisions in *Green* and other cases that a school system is subject to judicial supervision until it completes the desegregation of its schools in all the respects listed in *Green*.

The modern school system is "made up of interrelated factors."[25] Recognizing this fact, the Court in *Green* identified at least six major areas of school system operations –

[25] Purkey & Smith, *Effective Schools: A Review*, 83(4) ELEMENTARY SCHOOL JOURNAL 440, 441 (1986); *see* Bryk, Lee & Smith, *High School Organization and Its Effects on Teachers and Students*, in 1 CHOICE AND CONTROL IN AMERICAN EDUCATION 139 (Clune & Witte eds. 1990).

assignment of students, of faculty and of staff, transportation, extracurricular activities, and facilities – that serve as important indicia of a segregated system. *See Swann*, 402 U.S. at 18. Because of the interplay of these factors, the Court's focus, in reviewing efforts by school boards to overcome past segregation, has been on whether the school board in question has satisfied its "affirmative duty to desegregate the entire *system*." *Keyes*, 413 U.S. at 213 (emphasis added), to produce a "public school *system* wholly free from racial discrimination." *Milliken II*, 433 U.S. at 283 (emphasis added).[26]

This systemwide focus is critical to the success of the desegregation process.[27] A systemwide focus is also important to righting the systemwide wrong of illegal discrimination. "[W]here, as here, a constitutional violation has been found, the remedy does not exceed the violation if the remedy is tailored to cure the *condition* that offends the Constitution." *Milliken II*, 433 U.S. at 282 (emphasis in original; citation omitted). Here,

[26] The emphasis on establishing a desegregated *system* has pervaded this Court's desegregation decisions from the outset. *See Brown II*, 349 U.S. at 301 (district must "effectuate a transition to a racially nondiscriminatory school *system*") (emphasis added); *Green*, 391 U.S. at 436 ("transition to a unitary, non-racial *system* of public education was and is the ultimate end") (emphasis added); *Raney v. Board of Educ.*, 391 U.S. 443, 449 (1968) (goal is a "'non-racially operated school *system*'") (emphasis added, citation omitted); *Alexander v. Holmes County Bd. of Educ.*, 396 U.S. 19, 21 (1969) (goal must be "a totally unitary school *system*") (emphasis added); *Swann*, 402 U.S. at 22 ("remedy commanded was to dismantle dual school *systems*") (emphasis added).

[27] *See, e.g.*, FOREHAND & RAGOSTA, A HANDBOOK FOR INTEGRATED SCHOOLING 11-12 (Washington, D.C.: Dep't of Health, Education and Welfare 1976); Sheehan, *A Study of Attitude Changes in Desegregated Intermediate Schools*, 53 SOCIOLOGY OF EDUCATION 51, 59 (1980); Scott & McPartland, *Desegregation as National Policy: Correlates of Racial Attitudes*, 19 AMERICAN EDUCATIONAL RESEARCH JOURNAL 397-414 (1986); Pettigrew, Useem, Normand & Smith, *Busing: A Review of the Evidence*, in THE GREAT SCHOOL BUS CONTROVERSY 148 (N. Mills ed. 1973).

as in *Milliken II*, the "condition" offending the Constitution is DCSS's system of *de jure* segregation, which infected the school system as a whole. It is thus essential that, in fashioning a remedy and evaluating its effectiveness, the supervising court must focus on the school system in its entirety and on all its constituent elements. *See Dayton Bd. of Educ. v. Brinkman*, 433 U.S. at 420; *Milliken II*, 433 U.S. at 282-83.

The Court's decisions demonstrate that the Constitution demands attainment of a desegregated school system as a whole, and maintenance of that desegregated system for a substantial period of years,[28] before a school district may be released from judicial supervision. For example, in *United States v. Montgomery County Bd. of Educ.*, 395 U.S. 225, 231-32 (1969), the Court noted that desegregation of faculty and staff is "a goal that we have recognized to be an important aspect of the basic task of achieving a public school system wholly free from racial discrimination." In *Milliken II*, the Court stressed that "discriminatory student assignment policies can themselves manifest and breed other inequalities built into a dual system founded on racial discrimination." 433 U.S. at 283. Similarly, the court in *Bradley v. School Bd. of the City of Richmond, Virginia*, 382 U.S. 103, 105 (1965), rejected the suggestion that there was no connection "between faculty allocation on an alleged racial basis and the adequacy of the desegregation plans."

Recently, in *Board of Educ. of Oklahoma City Public Schools v. Dowell*, 111 S. Ct. 630 (1991), this Court remanded the case to the district court for a determination whether the school board had made a sufficient showing of good faith compliance

[28] It is common ground that, in order to assure that a school district's compliance with the Constitution promises to be permanent, the six *Green* factors must be satisfied for a substantial period of time – at least three years – before a supervising court may relinquish jurisdiction over the school district (Pet. App. 14a; U.S. Brief 11 n.6 (three-year period "is the minimum necessary to ensure the school district's rehabilitation")).

with the desegregation decree. In so doing, the Court directed the district court, "[i]n considering whether the vestiges of *de jure* segregation had been eliminated as far as practicable . . . [to] look not only at student assignments, but 'to every facet of school operations – faculty, staff, transportation, extracurricular activities and facilities.'" *Id.* at 638, *quoting Green*, 391 U.S. at 435. In short, this Court's cases recognize that effective desegregation must take place within a school system as a whole and that this goal cannot be accomplished if judicial supervision is foreclosed in an incremental manner with respect to each specific *Green* factor.

The district courts, which have gained immeasurable practical experience in the course of administering desegregation decrees, have accordingly recognized that it would be nonsensical to permit isolated *seriatim* satisfaction of the *Green* factors. "[T]he components of a school desegregation plan are interdependent upon, and interact with, one another, so that changes with respect to one component may impinge upon the success or failure of another."[29] Even those lower courts that have remarked that school districts should be permitted to obtain gradual release from judicial supervision have themselves been unable to structure relief in an incremental manner.[30]

[29] *Vaughns v. Board of Educ. of Prince George's County*, 742 F. Supp. 1275, 1291 (D. Md. 1990); *see United States v. Charleston County School Dist.*, 738 F. Supp. 1513, 1537 (D.S.C. 1990); *United States v. State of Mississippi*, 725 F. Supp. 307, 312 (N.D. Miss. 1989); *Little Rock School Dist. v. Pulaski City Special School Dist.*, 716 F. Supp. 1162, 1171 (E.D. Ark. 1989).

[30] The decision of the Fifth Circuit in *United States v. Overton*, 834 F.2d 1171 (1987), contains *dicta* approving an "incremental" approach, but the question in that case was whether judicial supervision may be maintained when *all Green* factors were satisfied but future intentional discrimination could occur, an entirely different question that was resolved by this Court in *Dowell*. *See Overton*, 834 F.2d at 1177. In *Keyes v. School Dist. No. 1, Denver, Colo.*, 895 F.2d 659 (10th Cir. 1990), *cert. denied*, 111 S. Ct. 951 (1991), the court stated in *dicta* that a school district "may be declared

DCSS's reliance on *Spangler* is misplaced. In *Spangler*, it was undisputed that the school board's initial implementation of a court-approved plan had attained the objective of a racially-neutral attendance pattern. In these circumstances, the Court held that the district court could not engage in fine-tuning the remedy by requiring the school board "to rearrange its attendance zones each year so as to ensure that the social mix desired by the court was maintained in perpetuity." 427 U.S. at 436. Here, on the other hand, the court of appeals has not tinkered with the details of an effective plan; rather, it has ordered DCSS, which we submit never effectively desegregated student assignments and which undisputedly has adhered to segregative policies in related areas of school system operations, to take steps to remedy the pervasive segregation that still exists in its schools.[31]

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unitary in some respects but not others" but the court did not apply that standard because the school district in question was not "unitary" in any respect. *See id.* at 667. In *Morgan v. Nucci*, 831 F.2d 313 (1st Cir. 1987), the court similarly noted its approval of the "incremental unitariness" concept but was unable, on the record before it, to make a finding of "unitariness" as to *any* element of the school district's operations. *See id.* at 333; *see also Morgan v. Burke*, 926 F.2d 86, 92 (1st Cir. 1991). So far as we are aware, therefore, no court of appeals has actually upheld an "incremental unitariness" determination. This strongly suggests that the "incremental unitariness" approach is unworkable as a tool to guide the supervision of desegregation remedies by the lower courts.

The district court in this case realized the unworkability of the theory advanced by DCSS at a point in time when DCSS framed a related argument in a less subtle manner (Pet. App. 54a):

> Defendants argue that they achieved [desegregation in the area of faculty assignment] in every school at some point in time over the course of this case; therefore, it has been relieved of its constitutional burden. It would be ludicrous for this court to accept such an argument.

[31] The Court in *Spangler* does not appear to have considered the interrelationship, noted in other cases, between the various areas of school system operations. *See supra*, pp. 22-24. Nonetheless, there is a fun-

Amici submit that addressing the interrelated factors on a systemwide basis is the only effective means of curing the constitutional violation. In this case, for example, while DCSS contends that supervision over student assignments should be terminated, it is undisputed that the schools that are identifiably black are educationally inferior to identifiably white schools in several objective manifestations – black schools are staffed by teachers with less experience and less graduate education than identifiably white schools, and DCSS spends substantially less money to educate black students than white students.[32] As the court of appeals correctly pointed out, once DCSS finally complies with its responsibility of desegregating student as-

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damental distinction between a court's open-ended intrusion on the prerogatives of local school authorities after the successful implementation of a desegregation remedy in one area, as in *Spangler*, and a court's continuing supervision over all aspects of a school system in which blatant segregation concededly persists, which is the situation here.

[32] In a disclosure that is telling and distressing in equal measure, the DCSS defends the fact that it routinely spends substantially less money educating black students by claiming that the larger schools in which it places black students are "more efficient" – fewer teachers, administrators, and other staff are required to educate a greater number of black students – and by the fact that it permits assignment of more experienced teachers earning higher salaries to predominantly white schools (Pet. Br. 34 n.27). *Amici* are dismayed that a governmental entity entrusted with educating children would advocate higher faculty-student ratios and assignment of less experienced teachers in identifiably black schools on the basis of "efficiency" – a criterion that DCSS apparently finds relevant for its black students but not for its white students. Schools are society's primary means of providing a generation with the basic skills necessary to negotiate an increasingly complex world. *See Brown I*, 347 U.S. at 493. Efficiencies of scale provide no justification for a racially discriminatory allocation of educational resources. *See* I ASSESSMENT OF CURRENT KNOWLEDGE ABOUT THE EFFECTIVENESS OF SCHOOL DESEGREGATION STRATEGIES 85 (Hawley, *et al.*, eds. 1981).

signments, "most schools will no longer be racially identifiable and the DCSS will be unable to distribute resources in a racially imbalanced fashion" (Pet. App. 23a).

On the other hand, acceptance of DCSS's argument that a supervising court must relinquish jurisdiction one area at a time would impede effective supervision of desegregation decrees. Under that approach, as DCSS itself recognizes (Pet. Br. 29-30 n.24), the supervising court could not inquire into a school district's compliance in any area found to be "unitary" unless the plaintiffs were able to satisfy the difficult burden of proving a new event of intentional discrimination. As shown above, this result has no support in the decisions of this Court.[33]

The promise of *Brown* is an integrated school *system*, not merely a school district that has complied with the Constitution for a brief moment as to a single element of its operations. The continuing constitutional violation that mandates judicial supervision of DCSS is systemwide and pervasive in nature. The systemwide nature of the violation requires that the remedy be implemented on a systemwide basis. As courts supervising school systems have recognized, all elements of a school system

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[33] At all events, there is no support for DCSS's assertion that judicial supervision over a particular area that has been found to have been desegregated must cease completely, as if the entire school system had been found to be desegregated. If the Court decides not to require simultaneous satisfaction of all *Green* factors, it should hold that a showing less than a new incident of intentional discrimination in the particular area found to have been desegregated would suffice to reopen active judicial supervision in that area. In its decision containing *dicta* in favor of DCSS's approach, the First Circuit suggested that it may be inappropriate for all judicial supervision to cease over the area found to be "unitary." *Morgan*, 831 F.2d at 326 n.19 ("if unforeseen circumstances should ever necessitate a return trip to federal court by school plaintiffs, we note without deciding the possibility that the history of this litigation might militate for some modification of plaintiffs' evidentiary burden"); *see also Raney*, 391 U.S. at 449 ("the better course would be to retain jurisdiction until it is clear that disestablishment has been achieved").

– elements that are reflected in the *Green* factors – are inescapably intertwined and cannot be meaningfully separated. Narrowing the focus of permissible judicial intervention in the manner proposed by DCSS would provide insufficient assurance that effective desegregation has been achieved and would provide insufficient protection against resegregation. The Court should resist the efforts of DCSS to shift the burden from those found responsible for past discrimination to the innocent parties attempting to end segregation in public education.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX

SCHOOL DESEGREGATION: A SOCIAL SCIENCE STATEMENT

June 1991

When *Brown v. Board of Education* was decided in 1954, research on the effects of school desegregation was in its infancy. Segregation had been so rigidly enforced in schools throughout the country that the evidence which existed could speak only to its harmfulness.[1] Since so few children had experienced integrated education, little about its effects could be known. In the thirty-seven years since *Brown*, the landscape of American education has changed dramatically. The insistence of this court on equal protection of the laws, combined with principles of federalism, has allowed for the adoption of a multitude of desegregation plans tailored to local conditions. Children across the United States have been given the chance to attend a variety of desegregated schools, and the effects upon them and their communities have been the subject of careful study. By and large, however, the results of these studies have not entered the public debate over the merits of desegregation. Thus, findings which could be of use to judicial

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[1] *See Brown v. Board of Education*, quoting the Kansas lower court:

> Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a [racially] integrated school system.

347 U.S. at 494. *See also infra* n.8 for citations to social science literature documenting the effects of segregation.

and political deliberation are often overlooked. This statement reflects the judgment of the undersigned researchers.

Social science findings cannot substitute for an informed understanding of the legal and philosophical principles upon which this nation is built. No study can "settle" the great debates on equity and fairness that should and do take place in our democracy. However, much of what is now known by social science can establish a factual basis for those debates. This statement reports findings upon which there is substantial scholarly evidence.

Our overall conclusion reaffirms an observation first made in Gunnar Myrdal's seminal study of race in the United States: the separate threads of social life are bound together by a process of cumulative causation.[2] Whether the subject is the relationship between housing and school segregation, the conditions of successful desegregation, or the encouragement of educational reform, all findings point to the sensitivity of one factor to changes in another. Thus, desegregation in student assignment cannot be understood in isolation from changes in the curriculum, the adjustments of teachers and administrators, the reaction in the community, the changes in housing patterns, or the consequences of past segregation. Segregation of schools is reinforced by many other aspects of society and the process of desegregation has many ramifications outside the schoolhouse.

Our statement is divided into four parts. Part I describes some of the linkages between school segregation, housing segregation, and demographic change. Part II describes what is known about the overall effects of desegregation. Part III discusses some of the elements of successful desegregation, both

[2] G. MYRDAL, AN AMERICAN DILEMMA (New York: Harper, 1944), p. 77.

on the school and the district level. Part IV considers the linkages between educational reform and desegregation.

I: School Desegregation and Demographic Change

School segregation is closely related to residential segregation. Where one lives will often determine where one's children go to school. In discussions of school desegregation patterns there is often a perception that housing patterns radically limit school desegregation; that desegregation is hostage to demographic change. This view argues that housing choices are somehow independent of school choice, governmental actions, or school district policies; and that therefore housing choices affect schools and limit desegregation policies, but schools cannot affect housing. If it were impossible for school plans to cope with inexorable demographic changes, there would be little hope for lasting desegregation.

Scholars have known for some time, however, that the relationship between housing choice and school choice is actually interdependent.[3] While school district policy is certainly not the only cause of changes in the housing market, choices that school districts make about segregation or desegregation are significant. Not only do they affect the level of segregation within the district, they can also affect housing choices. School desegregation plans may either accelerate existing patterns of demographic change or may increase stability.

Three recent studies have found that the level of desegregation in school districts is strongly related to the level

[3] *See* "Appendix to Brief for Respondents -- School Segregation and Residential Segregation: A Social Science Statement," *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449 (1979), for a more detailed treatment of this relationship. This section of our statement summarizes the earlier statement but deals mostly with new research from the years after 1979.

of segregation in housing. Researchers in a 1984 study found that school desegregation between 1968-1973 doubled the rate of housing desegregation in the 1970's in 25 central cities with at least 100,000 blacks in 1980. Apart from school desegregation, only growth in the size of the city contributed significantly to housing desegregation. Interestingly enough, declines in housing segregation in the sixties did not result in declines in school segregation in the seventies.[4] That study suggested, in other words, that the effects of schools on demography might be greater than the impact of demographic changes on schools.

A more recent study of 960 school districts found that segregation measures for school districts usually dropped by more than 50 points when desegregation plans were implemented. Segregation scores for metropolitan areas in the United States dropped by about 10 points on average during the 1970's. During the decade that urban school integration increased the national levels of urban residential segregation fell.[5] A third study found that cities with metropolitan-wide school desegregation experienced substantially increased housing integration, an effect that was evident in districts of all sizes and in all regions of the country. Moreover, the desegregative effects on housing continued over time; that is, the districts with

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[4] D. PEARCE, R. CRAIN, & R. FARLEY, LESSONS NOT LOST: THE IMPACT OF SCHOOL DESEGREGATION ON THE RACIAL ECOLOGY OF LARGE AMERICAN CENTRAL CITIES (paper presented at the American Educational Research Association Annual Meeting, New Orleans, April 1984; at the American Sociological Association Meetings, San Antonio, Texas, August 1984; and appended to the Brief of the American Jewish Committee as *Amicus Curiae* in *Board of Educ. v. Dowell*, 111 S. Ct. 630 (1990)).

[5] K. Taeuber, *Desegregation of Public School Districts: Persistence and Change*, PHI DELTA KAPPAN (September 1990), p. 18-24. Segregation levels here were measured by the dissimilarity index, a commonly used measure of desegregation, with 0 representing no segregation and 100 representing complete segregation.

the most years of desegregated schools had the lowest levels of housing segregation as well.[6]

The influence of school segregation on housing comes about through the effect of segregated schools on the housing choice process. Districts with and without school desegregation have very different dynamics in their patterns of housing choice. Schools can influence housing choice by their decisions to create or to eliminate racially identifiable schools. Such schools, which can be identified by student or by faculty-staff racial composition, are created by policies such as school closing and construction, busing exemptions for racially mixed schools, and assignment that either increases or decreases the link between residential location and school assignment.[7] Racially identifiable schools play an important role in real estate advertisements and racial steering by realtors. Schools, for instance, are prominently mentioned in ads for homes in neighborhoods where the racial composition of the schools may be in doubt; schools that are so mentioned are typically 99% to 100% white.[8] Conversely, the closing of neighborhood schools in racially mixed neighborhoods can lessen the attractiveness of such neighborhoods by depriving them of their "own" neighborhood schools. This is especially true when neighborhoods which are racially identifiable are allowed to maintain their own, racially identifiable schools.

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[6] D. PEARCE, BREAKING DOWN BARRIERS: NEW EVIDENCE ON THE IMPACT OF METROPOLITAN SCHOOL DESEGREGATION ON HOUSING PATTERNS, (Washington: National Institute of Education, 1980).

[7] D. PEARCE, FINAL REPORT TO THE POTOMAC INSTITUTE ON THE CIVIL RIGHTS ISSUES AND IMPLICATIONS OF SCHOOL CLOSINGS (1984).

[8] D. Pearce, *Deciphering the Dynamics of Segregation: The Role of Schools in the Housing Choice Process*, THE URBAN REVIEW 13 (2):85-101 (1981).

By contrast, communities with desegregated schools foster a different dynamic with respect to housing choice. Since school assignment is not coterminous with the neighborhood, homeseekers and housing agents use other criteria to determine housing location, including convenience to employment, recreation and shopping. Moreover, some school districts, by exempting racially mixed neighborhoods from busing plans, promote the creation and maintenance of stably integrated neighborhoods. Cities such as Denver, Shaker Heights, Ohio, Louisville, Kentucky, and Oak Park, Illinois, have worked aggressively to minimize construction of segregated housing or to use desegregated schools as a tool to minimize racial transition and segregation.[9] Thus, far from being helpless in the face of racial change, school districts have considerable power to help shape and maintain housing patterns, either for the purpose of encouraging desegregation, or for the purpose of reinforcing segregation in both schools and housing.

Although there has been an intense and ongoing debate in social science research on the issue of "white flight" from desegregation plans, there is considerable agreement on several proposition of real importance for desegregation policy. First, basic demographic trends of increasing minority proportions in school districts exist in many cities with no desegregation plans or even with dismantled busing orders. In Atlanta, for example, an agreement to drop litigation for mandatory busing in 1973

[9] W. HAWLEY, ET AL., STRATEGIES FOR EFFECTIVE DESEGREGATION: LESSONS FROM RESEARCH (Lexington, Mass.: D.C. Heath 1983); M. Weinberg, *Housing and School Desegregation: Citizen Initiatives and Government Responses*, INTEGRATED EDUCATION, 18:2-11 (July-August 1980); G. CUNNINGHAM & W. HUSK, THE IMPACT OF COURT-ORDERED DESEGREGATION ON STUDENT ENROLLMENT AND RESIDENTIAL PATTERNS IN THE JEFFERSON COUNTY KENTUCKY PUBLIC SCHOOL DISTRICT, FINAL REPORT (Louisville, Ky.: Jefferson County Education Consortium, June 30, 1979); KENTUCKY COMMISSION ON HUMAN RIGHTS, HOUSING AND SCHOOL DESEGREGATION INCREASED BY SECTION 8 MOVES, (Frankfort, Ky.: Kentucky Commission on Human Rights, April 1980).

was followed by rapid and almost total resegregation of the school district. Second, plans can produce long-lasting integration. Charlotte-Mecklenburg, North Carolina, the first district to implement large scale city-suburban mandatory desegregation, remained highly integrated a generation after its 1971 court order. Among the nation's largest school districts half of the ten reporting the smallest decline in the proportion of white students from 1968-1986 had mandatory county-wide desegregation plans.[10] Some of the most extensive court-ordered plans may actually foster demographic stability. Long lasting desegregation has been achieved in many districts.

II: Desegregation's Impact on Students

Research on the effects of desegregation on students has concentrated on two areas: the effects of desegregation upon students, and the lasting effects of desegregation upon the race relations in society. Of this research, no topic has been given more attention than the evaluation of the achievement of white and black students in desegregated settings. Because of the wide variety of desegregated settings and the limitations of most studies to a single year at the beginning of desegregation, there is no general consensus on the size of achievement test score gains by students. However, there is wide agreement on the basic conclusion: "Desegregation is generally associated with moderate gains in the achievement of black students and the achievement of white students is typically unaffected. . . . The most comprehensive synthesis of case studies, which includes 93 inquiries and uses the statistical techniques employed by the

[10] F.GAILLARD, THE DREAM LONG DEFERRED (Chapel Hill, N.C.: University of North Carolina Press, 1988); G. ORFIELD & F. MONFORT, RACIAL CHANGE AND DESEGREGATION IN LARGE SCHOOL DISTRICTS: TRENDS THROUGH THE 1986-1987 SCHOOL YEAR (Alexandria, Va.: National School Boards Association, 1988); G. Orfield and L. Peskin, *Metropolitan High Schools: Income, Race and Inequality*, in D. MITCHELL AND M. GOERTZ (EDS.), EDUCATION POLITICS FOR THE NEW CENTURY (London: Falmer Press, 1990) pp. 27-53.

most sophisticated researchers on this topic, concluded that the [positive] effect is significant."[11]

A number of factors contribute to the gains for minority students. Experience in a desegregated class may motivate minority students, giving them hope that they will have an opportunity as adults to escape segregated job markets, that successfully competing in an interracial school can lead to later life success.[12] Educators and community leaders may hold higher expectations for achievement for students in integrated

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[11] W. Hawley & M. Smylie, *The Contribution of School Desegregation to Academic Achievement and Racial Integration*, in P. KATZ AND D. TAYLOR (EDS.), ELIMINATING RACISM: PROFILES IN CONTROVERSY (New York: Plenum, 1988), pp. 284-85. *See also* J.S. Coleman *et al.*, EQUALITY OF EDUCATIONAL OPPORTUNITY (Washington, D.C.: U.S. Government Printing Office, 1966); N.H. ST. JOHN, SCHOOL DESEGREGATION: OUTCOMES FOR CHILDREN (New York: Wiley, 1975); C. Jencks and M. Brown, *The Effects of Desegregation of Student Achievement: Some New Evidence from the Equality of Educational Opportunity Survey*, SOCIOLOGY OF EDUCATION 48:136-137 (Winter 1975); R. Crain and R. Mahard, *Desegregation and Black Achievement: A Review of the Research*, LAW AND CONTEMPORARY PROBLEMS, 42:17-56 (1978); R. Crain and R. Mahard, *Some Policy Implications of the Desegregation-Minority Achievement Literature*, in W. HAWLEY (ED.), EFFECTIVE SCHOOL DESEGREGATION: EQUITY, QUALITY AND FEASIBILITY (Beverly Hills, Cal.: Sage, 1981); R. Mahard and R. Crain, *The Effect of Research Methodology on Desegregation-Achievement Studies: A Meta-Analysis*, AMERICAN JOURNAL OF SOCIOLOGY, 88(5): 839-854 (1983); P.M. Wortman and F.B. Bryant, *School Desegregation and Black Achievement: An Integrative Review*, SOCIOLOGICAL METHODS AND RESEARCH 13(3):289-324 (1985); S. Mayer and C. Jencks, *Growing Up in Poor Neighborhoods: How Much Does It Matter?*, SCIENCE 243:1441-1445 (1989).

[12] R. CRAIN, R. MAHARD, & R. NAROT, MAKING DESEGREGATION WORK: HOW SCHOOLS CREATE SOCIAL CLIMATES (Cambridge: Ballinger, 1982); D. Longshore and J. Praeger, *The Impact of School Desegregation: A Situational Analysis*, ANNUAL REVIEW OF SOCIOLOGY, 11:75-91 (1985); J. Ogbu, *Structural Constraints in School Desegregation*, in J. PRAEGER, D. LONGSHORE AND M. SEEMAN (EDS.), SCHOOL DESEGREGATION RESEARCH (New York: Plenum, 1986).

schools, compared to low expectations of minority schools with many low income students.[13] The new access of minority students to quality facilities, learning materials, and teaching techniques, along with the teacher in-service training and the community pressures for achievement that often accompany desegregation, is often significant in raising achievement levels.[14] Research in this area is still ongoing; scholars, for instance, are still investigating exactly why the combination of students of different socioeconomic status tends to increase the achievement of students with lower socioeconomic status.[15] However, it is likely that the combination of several factors, rather than any one in isolation, accounts for the increase in achievement.

In addition, studies on the potential impact of racial and socioeconomic desegregation on Hispanic students show that it improves their chances of completing school and reduces their odds of becoming teen parents. More specifically, a recent study found that Hispanic students who attend high-

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[13] D.J. Veldman & J. P. Sanford, *The Influence of Class Ability Level on Student Achievement and Classroom Behavior*, AMERICAN EDUCATIONAL RESEARCH JOURNAL 21:629-644 (1984); R. L. Crain, Desegregated Schools and the Non-Academic Side of College Survival (paper presented at the American Educational Research Association meeting, New Orleans, April 1984).

[14] HAWLEY AND SMYLIE, 1988, op cit.; G. JAYNES AND R. WILLIAMS, A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY (Washington, D.C.: National Academy Press, 1989); B. Hare, *Self-Perception and Academic Achievement Variation in the Desegregated Setting*, AMERICAN JOURNAL OF PSYCHIATRY, 137:(6) 683-89 (June 1980).

[15] K.B. CARSUD, DOES PAIRING HURT CHAPTER 1 STUDENTS? (Austin, Texas: Office of Research and Evaluation, Austin Independent School District, 1984); D. Walsh, *SES, Academic Achievement, and Reorganization of Metropolitan Area Schools: Preliminary Implication of the Milwaukee Area Study*, METROPOLITAN EDUCATION 1:78-91 (1986); M.B. ARIAS, COMPLIANCE MONITOR'S FIFTH SEMI-ANNUAL REPORT: VASQUEZ V. SAN JOSE (CA) UNIFIED SCHOOL DISTRICT (Submitted to Hon. Robert F. Peckham, Chief U.S. District Judge, San Francisco, Cal., 1989); JENCKS AND MAYER, 1989, *op cit.*

socioeconomic status ("SES") schools are less likely to drop out of high school between the tenth and twelfth grades and that girls who attend high-SES schools are less likely to have a child between the tenth and twelfth grades than students with the same family background who attend lower SES-schools.[16]

It is particularly important to note that white students have not suffered from desegregation. Not only have studies of achievement shown no drop in white achievement scores because of desegregation, white students benefit from the school reforms, teacher training, and intergroup cooperation that can follow desegregation.[17] White students, moreover, continue to participate in their accustomed extracurricular activities after black classmates arrive in school, activities such as sports, music,

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[16] L. GREBLER, *ET AL.*, THE MEXICAN-AMERICAN PEOPLE: SECOND LARGEST MINORITY (New York: Free Press, 1970); H. MANUEL, THE SPANISH-SPEAKING CHILDREN OF THE SOUTHWEST: THEIR EDUCATION AND PUBLIC WELFARE (Austin, Texas: University of Texas Press, 1965); J. Samora, *The Education of the Spanish-Speaking People in the Southwest: An Analysis of 1960 Data*, in SUMMARY OF THE MEXICAN-AMERICAN SEMINAR PRESENTED BY CAREERS FOR YOUTH AND THE MEXICAN-AMERICAN COMMUNITY OF PHOENIX (Phoenix, Ariz., 1963); UNITED STATES COMM'N ON CIVIL RIGHTS, MEXICAN-AMERICAN EDUCATION STUDY, REPORTS I-VI (April 1971-February 1974); *Mexicano/Chicano Concerns in School Desegregation in Los Angeles*, Monograph No. 9 (Los Angeles: University of California at Los Angeles, Chicano Studies Center Publication, 1977); S.E. Meyer, *How Much Does a High School's Racial and Socioeconomic Mix Affect Graduation and Teenage Fertility Rates?*, in C. JENCKS & P. PETERSON (EDS.), THE URBAN UNDERCLASS (Washington, D.C.: Brookings Institute, 1991).

[17] M. WEINBERG, SEARCH FOR QUALITY INTEGRATED EDUCATION (Westport, Conn.: Greenwood, 1983); J. SCHOFIELD, REVIEW OF SCHOOL DESEGREGATION'S IMPACT ON ELEMENTARY AND SECONDARY SCHOOL STUDENTS (Hartford, Conn.: State Department of Education, 1989).

academic interest clubs, and school-support activities.[18] And as is discussed in later sections, desegregation can serve as the occasion for students of different races to learn to work together in our increasingly multi-ethnic society.

White students benefit from learning to function in a racially diverse setting that can prepare them for the workforce of the future. In the United States between 1980 and 1990 the growth of white population was half as rapid as that of black population and about one-seventh the rate of Hispanic increase. A major report to the U.S. Department of Labor, WORKFORCE 2000, shows that only a small minority of the added workers in the next generation will be white males. The public school population of the nation's largest state, California, already has a large non-white majority. The U.S. Equal Employment Opportunities Commission's 1984 report, PROJECT 2000: JOB AND TRAINING OPPORTUNITIES FOR MINORITIES AND WOMEN, concludes that demographic changes within the workforce, the changing structure of jobs, and the increasing need for "access to training and education" will be critical to our future economy. Whites who know how to function effectively in a multiracial setting will have substantial advantages in the job settings of the future.[19]

The benefits of desegregation for minorities as well as whites extend beyond the school experience. Education is important in large part because of the opportunities and life chances a good school gives to its students. Historic discrimination against

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[18] V. Wilson, The Relationship Between Racial Composition of Desegregated High Schools and Membership in Co-Curricular Programs in Baltimore City (doctoral dissertation, Temple University, 1978).

[19] WORKFORCE 2000: WORK AND WORKERS FOR THE 21ST CENTURY (Indianapolis: Hudson Institute, 1987); U.S. EQUAL EMPLOYMENT OPPORTUNITIES COMMISSION, PROJECT 2000: JOB AND TRAINING OPPORTUNITIES FOR MINORITIES AND WOMEN (Washington, D.C.: Government Printing Office, 1984).

blacks in the labor market resulted in structural barriers which close off opportunities to blacks. Attending desegregated schools seems to help to break down these barriers. Black students who go to desegregated schools tend to have more friends of other races, work in higher-status jobs, live in integrated neighborhoods, attend and graduate from multiracial colleges and evaluate their own skills and education in more realistic ways when choosing an occupation.[20] This is extremely

[20] W.W. Falk, *School Desegregation and the Educational Attainment Process: Some Results from Rural Texas Schools*, SOCIOLOGY OF EDUCATION 51:282-288 (1978); K.L. Wilson, *The Effects of Integration and Class on Black Educational Attainment*, SOCIOLOGY OF EDUCATION 52:84-98 (1979); J. Braddock, *The Perpetuation of Segregation Across Levels of Education: A Behavioral Assessment of the Contact Hypothesis*, SOCIOLOGY OF EDUCATION, 53:178-186 (1980); J. Braddock & J. McPartland, *Going to College and Getting a Good Job: The Impact of Desegregation*, in HAWLEY (ED.), 1981, *op cit.*; G. Orfield, *Housing Patterns and Desegregation Policy*, in HAWLEY (ED.), 1981, *op cit.*; J.W. Hoelter, *Segregation and Rationality in Black Status Aspiration Processes*, SOCIOLOGY OF EDUCATION, 55:31-39 (1982); R.K. GABLE, D.L. THOMPSON, & E.F.IWANICKI, THE EFFECT OF VOLUNTARY SCHOOL DESEGREGATION ON OCCUPATIONAL OUTCOMES (American Educational Research Association Meeting, New York, 1982); J. BRADDOCK AND J. MCPARTLAND, MORE EVIDENCE ON THE SOCIAL-PSYCHOLOGICAL PROCESSES THAT PERPETUATE MINORITY SEGREGATION: THE RELATIONSHIP OF SCHOOL DESEGREGATION AND HOUSING DESEGREGATION (REPORT 338) (Baltimore: Johns Hopkins University, Center for the Social Organization of Schools, 1983); W. Trent, *Equity Considerations in Higher Education: Race and Sex Differences in Degree Attainment and Major Field from 1976-1981*, AMERICAN JOURNAL OF EDUCATION 41:280-305 (1984); R. CRAIN & J. STRAUSS, SCHOOL DESEGREGATION AND BLACK OCCUPATIONAL ATTAINMENT: RESULTS FROM A LONG-TERM EXPERIMENT (Baltimore: Center for Social Organization of Schools, Johns Hopkins University, 1985); G. THOMAS, THE ACCESS AND SUCCESS OF BLACKS AND HISPANICS IN US GRADUATE AND PROFESSIONAL EDUCATION (Washington, D.C.: National Academy of Sciences, 1986); R. Johnson, *Factors Related to the Postbaccalaureate Careers of Black Graduates of Selected Four Year Institutions in Alabama*, in A. PRUITT (ED), IN PURSUIT OF EQUALITY IN HIGHER EDUCATION (Dix Hills, N.Y.: General Hall, 1987); J. Braddock & J. McPartland, *Social Psychological Processes that Perpetuate Racial Segregation: The Relationship Between School*

important in the light of new studies which show that the social isolation of minorities in poor urban ghettos forms the greatest barrier to their social and economic mobility.[21] In the largest study to test these hypotheses to date, black students who were randomly assigned to integrated suburban schools rather than segregated city schools were less likely to have dropped out of high school, gotten into trouble with the police, borne a child before age 18, dropped out of college, or feel discriminated against in college, and were more likely to have white friends and live in integrated neighborhoods.[22] All of these factors point to the benefits of increasing racial integration in the society at large, which can be fostered by desegregation.

To summarize, desegregation has clear benefits for black students. It does not harm the academic achievement of white students and may well be beneficial in their future work. Its benefits extend beyond the classroom to the larger issues of

and Employment Desegregation, JOURNAL OF BLACK STUDIES, 19:267-289 (1989); E. Camburn, *College Completion Among Students from High Schools Located in Large Metropolitan Areas*, in G. ORFIELD (ED). CHANGING PATTERNS OF OPPORTUNITY IN HIGHER EDUCATION: AMERICAN JOURNAL OF EDUCATION (Special Issue), 98(4):551 (August 1990).

[21] W.J. WILSON, THE TRULY DISADVANTAGED (Chicago: University of Chicago Press, 1987).

[22] R. CRAIN, *ET AL.*, A LONGITUDINAL STUDY OF A METROPOLITAN VOLUNTARY SCHOOL DESEGREGATION PLAN (New York: Institute for Urban and Minority Education, Teachers College, 1991); R. CRAIN & C. WEISMAN, DISCRIMINATION, PERSONALITY, AND ACHIEVEMENT (New York: Seminar Press, 1972); J. Braddock & J. McPartland, *Assessing School Desegregation Effects: New Directions in Research*, in R. CORWIN (ED.), RESEARCH IN SOCIOLOGY OF EDUCATION AND SOCIALIZATION (Greenwich, Conn.: JAI, 1982); K.C. Green, Integration and Educational Attainment: A Longitudinal Study of the Effects of Integration on Black Educational Attainment and Occupational Outcomes (doctoral dissertation, University of California, Los Angeles, 1982); E.F. Furstenberg, *et al.*, *Race Differences in the Timing of Adolescent Intercourse*, AMERICAN SOCIOLOGICAL REVIEW 52:511-518 (1987).

integration in employment, higher education, and housing. Merely placing black and white children together in school, however, does not achieve these goals. Desegregation is a process, not an event. There is nothing to suggest that brief exposure to whites, in schools that do nothing else to produce equal opportunity, will cure the harms created by a history of segregation. Thus, it is to the conditions of successful desegregation that we now turn.

III: Necessary Conditions for Effective Desegregation

Assigning minority and white students to the same school is no panacea for educational inequality. The creation of racially-mixed rather than racially-segregated schools is just the beginning of the long-term process of interracial schooling. At both the district level and within the school, strategies to promote rather than decrease racial tolerance and increase rather than alienate community support can be put into place. We summarize some of these strategies here.

The wide variety of desegregation plans and school district conditions in the United States has allowed researchers to examine the merits of different desegregation plans. On the district level, these studies suggest that successful plans: (1) desegregate as many grades as possible at the same time, concentrating especially on the youngest students; (2) cover as large a geographic area as possible to include a broad spectrum of socioeconomic classes as well as races; and (3) persevere with the long-range goal of desegregation, despite opposition.

From the perspective of race relations, these findings have several explanations. When a student's entire school career will be in a desegregated setting, everyone becomes motivated to make the experience work. However, if desegregation will affect a student for only a few years, it becomes feasible for parents to skirt desegregation by sending their children to

private school for those years.[23] Whites who attend segregated elementary schools are also less accepting of desegregated education in high school, thus providing an additional reason to desegregate in the early grades.[24] Moreover, when an entire district is included, all socioeconomic groups have an interest in the successful outcome of school desegregation; each group is less likely to feel that they have been "burdened" unfairly and decide to leave the public school system.[25] For this reason, evidence from Charlotte-Mecklenberg, Atlanta, Dallas, Boston, Denver, Riverside, San Jose, and districts in Georgia and Atlanta and many other cities show that area-wide desegregation produces more enrollment stability than desegregation limited to part of an urban community.[26]

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[23] M.Giles, *Racial Stability and Urban School Desegregation*, URBAN AFFAIRS QUARTERLY 12 (1977).

[24] COLEMAN, *ET AL.*, 1986, *op cit.*; W.D. Hawley, *Equity and Quality in Education: Characteristics of Effective Desegregated Schools*, in HAWLEY (ED.), 1981, *op cit.*; J. McConahay, *Reducing Racial Prejudice in Desegregated Schools*, in HAWLEY (ED.), 1981, *op cit.*; J.H. Schweitzer and R.J. Griffore, *A Longitudinal Study of Attitudes of Students and Parents with Court-Ordered School Desegregation*, URBAN REVIEW 13:2 (1981); M. PATCHEN, BLACK-WHITE CONTACT IN SCHOOLS: ITS SOCIAL AND ECONOMIC EFFECTS (West Lafayette, Ind.: Purdue University Press, 1982); D.W. JOHNSON, *ET AL.*, INTERDEPENDENCE AND INTERPERSONAL ATTRACTION AMONG HETEROGENEOUS AND HOMOGENOUS INDIVIDUALS: A THEORETICAL FORMULATION AND A META-ANALYSIS OF THE RESEARCH (University of Minnesota, unpublished manuscript, 1982); J. Raffel, PUBLIC OPINION TOWARD THE PUBLIC SCHOOLS OF NORTHERN NEW CASTLE COUNTY (University of Delaware, College of Urban Affairs and Public Policy, unpublished manuscript, 1983).

[25] G. Orfield, *Why It Worked in Dixie: Southern School Desegregation and Its Implications for the North*, in A. YARMOLINSKY, *ET AL.*, RACE AND SCHOOLING IN THE CITY (Cambridge, Mass.: Harvard University Press, 1981).

[26] J.Finger, *Why Busing Plans Work*, in F. LEVINSON & B. WRIGHT, SCHOOL DESEGREGATION: SHADOW AND SUBSTANCE (Chicago: University of Chicago, 1976); M. GILES, ET AL., DETERMINANTS OF RESEGREGATION:

Students seem to achieve better academically when they are desegregated at younger ages.[27] Minority achievement is higher for students in classes with mixed socioeconomic status, which undergirds the findings on the benefit of a broad desegregation plan.[28] Academic tracking can produce segregated classes within desegregated schools, which can undo the benefits of classes where students are both racially and socioeconomically integrated.[29]

COMPLIANCE/REJECTION BEHAVIOR AND POLICY ALTERNATIVES (Washington, D.C.: National Science Foundation, 1976); D. Lord and J. Catau, *School Desegregation Policy and Intra-School District Migration*, SOCIAL SCIENCE QUARTERLY, v. 57 (1977); C. Rossell and J. Ross, The Long-term Effect of Court-Ordered Desegregation on Student Enrollment in Central City Public School Systems: The Case of Boston, 1974-79 (Boston University, unpublished manuscript, 1979); C. CLOTFELTER, PREPARED STATEMENT TO THE SENATE JUDICIARY COMMITTEE, SUBCOMMITTEE ON SEPARATION OF POWERS, HEARINGS ON COURT-ORDERED SCHOOL BUSING, 97TH CONGRESS, 1ST SESSION (1981).

[27] CRAIN AND MAHARD, 1978, 1981, 1983, *op cit.*; N. St. John, *The Effects of School Desegregation on Children: A New Look at the Research Evidence*, in YARMONLINSKY, *ET AL.* (EDS.), 1981, *op cit.*; R. Krol, A Meta-Analysis of Comparative Research on the Effects of Desegregation on Academic Achievement (doctoral dissertation, Western Michigan University, 1980).

[28] COLEMAN, *ET AL.*, 1966, *op cit.*; R. BRIDGE, C. JUDD, & P. MOOCK, THE DETERMINANTS OF EDUCATIONAL OUTCOMES: THE EFFECT OF FAMILIES, PEERS, TEACHERS, AND SCHOOLS (New York: Teachers College Press, 1979); Crain, *et al.*, 1982, *op cit.*; R. Henderson, *et al.*, *Remedies for Segregation: Some Lessons from Research*, EDUCATIONAL EVALUATION AND POLICY ANALYSIS (1981).

[29] NATIONAL INSTITUTE OF EDUCATION, COMPENSATORY EDUCATION STUDY (Washington, D.C.: U.S. Government Printing Office, 1980); C. Kulik & J. Kulik, *Effects of Ability Grouping on Secondary School Students: A Meta-Analysis of Evaluation Findings*, AMERICAN EDUCATIONAL RESEARCH JOURNAL 19:3 (1982); J. OAKES, KEEPING TRACK: HOW SCHOOLS STRUCTURE INEQUALITY (New Haven, Conn: Yale University Press, 1985).

The benefits of desegregation take place over the long-term. When judicial requirements are unambiguous, and enforcement agencies promulgate precise regulations, desegregation is much more likely to succeed than when opposition leads judicial or agency principles to be stated in ambiguous or unclear terms.[30] Schools that allow their desegregative goals to be derailed will often have paid the costs but not achieved the benefits of desegregation.[31] Persistence allows schools to move past the period of community opposition and white flight, which may be strong within the first year of a plan but then decline rapidly.[32]

Successful desegregation takes place not only within the district but within schools. The many studies on desegregation show that the way in which desegregated schools are structured is crucial in determining whether students of all racial and ethnic groups have an equal opportunity to develop their full potential and cooperate to produce social harmony. For instance, carefully structured cooperation, whether it be in extracurricular activities or in classroom cooperative learning

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[30] C. Bullock, *The Office For Civil Rights and Implementation of Desegregation Programs in the Public Schools*, POLICY STUDIES JOURNAL 8:606 (1980); Orfield, 1981, *op cit.*; G. ORFIELD, PUBLIC SCHOOL DESEGREGATION IN THE UNITED STATES, 1968-80 (Washington, D.C.: Joint Center for Political Studies, 1983); M. REBELL & A. BLOCK, EQUALITY AND EDUCATION: FEDERAL CIVIL RIGHTS ENFORCEMENT IN THE NEW YORK CITY SCHOOL SYSTEM (Princeton, N.J.: Princeton University Press, 1985).

[31] G. FOREHAND, M. RAGOSTA, & D. ROCK, CONDITIONS AND PROCESSES OF EFFECTIVE SCHOOL DESEGREGATION (Princeton, N.J.: Educational Testing Service, 1976); KROL, 1980, *op cit.*; D. MORGAN & R. ENGLAND, ASSESSING THE PROGRESS OF LARGE CITY SCHOOL DESEGREGATION: A CASE SURVEY APPROACH (University of Oklahoma, Bureau of Government Research, Unpublished Report, 1981); J. BRADDOCK AND J. MCPARTLAND, 1982, *op cit.*; C. Rossell, *Desegregation Plans, Racial Isolation, White Flight, and Community Response*, in C. ROSSELL AND W. HAWLEY (EDS.), THE CONSEQUENCES OF SCHOOL DESEGREGATION (Philadelphia: Temple University Press, 1983).

[32] ROSSELL, 1983, *op cit.*

groups, can have positive effects on both academic achievement and race relations.[33] Cooperative learning groups also increase academic achievement, student-to-student help, cross-race interactions outside the classroom, self-esteem, liking for teachers, and ability to empathize.[34]

A second theme which emerges from this work is the importance of finding ways to give the members of each group a sense that they are influential and valued within the context

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[33] E. ARONSON, *ET AL.*, THE JIGSAW CLASSROOM (Beverly Hills, Cal.: Sage, 1978); S. Sharan, *Cooperative Learning In Teams: Recent Methods and Effects on Achievement, Attitudes, and Ethnic Relations*, REVIEW OF EDUCATIONAL RESOURCES 50:241-272 (1980); R. Slavin, *Student Team Learning: A Manual for Teachers*, in S. SHARAN, *ET AL.* (EDS.), COOPERATION IN EDUCATION (Provo, Utah: Brigham Young University Press, 1980); R. SLAVIN, COOPERATIVE LEARNING (New York: Longman, 1983); R. Slavin, *When Does Cooperative Learning Increase Student Achievement?*, PSYCHOLOGICAL BULLETIN, 94:429-445 (1983); R. Slavin, *Cooperative Learning: Applying Contact Theory in Desegregated Schools*, JOURNAL OF SOCIAL ISSUES 41:45-62 (1985); Johnson & Johnson, 1982, *op cit.*; J. Schofield & A. Sagar, *Desegregation, School Practices and Student Race Relations*, in ROSSELL & HAWLEY (EDS.), 1983, *op cit.*

[34] G. FOREHAND & M. RAGOSTA, A HANDBOOK FOR INTEGRATED SCHOOLING (prepared for the U.S. Office of Education, Department of Health, Education and Welfare) (Princeton, N.J.: Educational Testing Service, 1976); E. Cohen, *Design and Redesign of the Desegregated School: Problems of Status, Power, and Conflict*, in W.G. STEPHAN AND J.R. FEAGIN (EDS.), SCHOOL DESEGREGATION: PAST, PRESENT, AND FUTURE (New York: Plenum Press, 1980); SLAVIN, 1981, *op cit.*; W. HAWLEY, ET AL., STRATEGIES FOR EFFECTIVE DESEGREGATION: A SYNTHESIS OF FINDINGS (Nashville, Tenn.: Vanderbilt University, Institute for Public Policy Studies, 1981); J. Schofield, *Desegregation, School Practices and Student Race Relations Outcomes*, in C. ROSSELL, ET AL., A REVIEW OF THE EMPIRICAL RESEARCH ON DESEGREGATION (Nashville, Tenn.: Vanderbilt University, Institute for Public Policy Studies, 1981); D. JOHNSON & R. JOHNSON, LEARNING TOGETHER AND ALONE: COOPERATION, COMPETITION, AND INDIVIDUALIZATION (Englewood Cliffs, NJ: Prentice Hall, 1982); W. Lacey, *et al.*, *Fostering Constructive Intergroup Contact in Desegregated Schools*, JOURNAL OF NEGRO EDUCATION 52:2 (1983).

of the school and school system. For example, community and parental involvement in developing, implementing, and monitoring the desegregation plan is very helpful in gaining community acceptance and support.[35] There is also evidence that utilizing multi-ethnic texts, avoiding unnecessary ability grouping, applying disciplinary codes fairly to avoid punishing students for cultural differences, changing symbols and customs of the school to put "old and "new" on equal footing, and incorporating detailed, practical, timely and empathetic human relations programs for teachers and students also help to create an inclusive school community and minimize racial and social tensions.[36]

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[35] W. HAWLEY, *ET AL.*, STRATEGIES FOR EFFECTIVE DESEGREGATION, (Lexington, Mass.: D.C. Heath, 1983); B. Hare, *Black and White Self Esteem in Social Science: An Overview*, JOURNAL OF NEGRO EDUCATION, 46(2):141-156 (Spring 1977).

[36] HAWLEY, *ET AL.*, 1983, *op cit.*; W.G. Stepan & C.W. Stepan, *The Role of Ignorance in Intergroup Relations*, in N. MILLER & M.B. BREWER (EDS.), GROUPS IN CONTACT: THE PSYCHOLOGY OF DESEGREGATION (Orlando, Florida: Academic Press, 1984); J.R. Mercer, *et al.*, *Building Effective Multi-ethnic Schools: Evolving Models and Paradigms*, in STEPHAN & FEAGIN (EDS.), 1980, *op cit.*; HENDERSON, *ET AL.*, 1981, *op cit.*; CRAIN, *ET AL.*, 1982, *op cit.*; FOREHAND, *ET AL.*, 1976, *op cit.*; W.J. DOHERTY, *ET AL.*, HUMAN RELATIONS STUDY: INVESTIGATIONS OF EFFECTIVE HUMAN RELATIONS STRATEGY, VOL. 2 (Santa Monica, Cal.: Systems Development Corporation, 1981); M. SMYLIE & W. HAWLEY, INCREASING THE EFFECTIVENESS OF IN-SERVICE TRAINING FOR DESEGREGATION: A SYNTHESIS OF CURRENT RESEARCH (Washington, D.C.: National Education Association, 1982); H. Walberg, *et al.*, *The Quiet Revolution in Educational Research*, PHI DELTA KAPPAN, 1979; R. Slavin & N. Madden, *School Practices That Improve Race Relations*, AMERICAN EDUCATIONAL RESEARCH JOURNAL, 1979; C. MOODY, *ET AL.*, STUDENT RIGHTS AND DISCIPLINE: POLICIES, PROGRAMS, AND PROCEDURES (Ann Arbor, Mich.: University of Michigan, School of Education, 1978); B. BOSMA, PLANNING FOR AND IMPLEMENTING EFFECTIVE SCHOOL DESEGREGATION: THE ROLE OF TEACHER ASSOCIATIONS (Washington, D.C.: U.S. Government Printing Office, 1980); J. BROPHY & T. GOOD, TEACHER-STUDENT RELATIONSHIPS: CAUSES AND CONSEQUENCES (New York: Holt, Rinehart, and Winston, 1974); J. EPSTEIN, AFTER THE BUS ARRIVES: RESEGREGATION IN DESEGREGATED

It is important that schools have minority faculty, including college counselors, and that white teachers are supportive of desegregation.[37] Historically, desegregation of teachers and students has progressed together, since very little desegregation occurred before *Rogers v. Paul*, 382 U.S. 198 (1964), the first major decision on teacher desegregation. Adult role models of both races working together in a school are important for minority and white students. There is some evidence that minority teachers may be less likely to use racially segregated instructional groupings than white teachers, to be less likely to place black and other minority students in lower instructional tracks, and to be more likely to expect black students to enter and complete college.[38] The presence of substantial numbers of minority administrators and teachers serves as a symbol of the fact that expertise and power are shared. Leadership which supports racial equality from the top of the school system on down is necessary. Research on children indicates that when a school or school district decides to take affirmative and persistent action to ensure positive outcomes of desegregation, such benefits occur.

SCHOOLS (Baltimore, Maryland: Johns Hopkins University, Center for the Social Organization of Schools, 1983); W. GENOVA AND H. WALBERG, A PRACTITIONER'S GUIDE FOR ACHIEVING STUDENT INTEGRATION IN CITY HIGH SCHOOLS (Washington, D.C.: U.S. Government Printing Office, 1981).

[37] BRIDGE, *ET AL.*, 1979, *op cit.*; CRAIN, *ET AL.*, 1982, *op cit.*; CRAIN & MAHARD, 1978, *op cit.*; DOHERTY, *ET AL.*, 1981, *op cit.*; HAWLEY, *ET AL.*, 1983, *op cit.*; J. Epstein, *After the Bus Arrives*, JOURNAL OF SOCIAL ISSUES, 41(3): 23-43 (1985); R. MURNANE, THE IMPACT OF SCHOOL RESOURCES ON THE LEARNING OF INNER CITY CHILDREN (Cambridge: Ballinger, 1975).

[38] BRIDGE, *ET AL.*, 1979, *op cit.*; CRAIN & MAHARD, 1978, *op cit.*; DOHERTY, *ET AL.*, 1981, *op cit.*; C. Beady and S. Hansell, *Teacher Race and Expectations for Student Achievement*, AMERICAN EDUCATIONAL RESEARCH JOURNAL, 18:191-206 (1983); J. Epstein, After the Bus Arrives: Resegregation in Desegregated Schools (paper presented at the American Educational Research Association Annual Meeting, Boston, April 1980).

Thus, desegregation is not just a matter of placing children in the same schools; it is a process of developing techniques that will further the goals of racial integration, including quality education for all students and racial harmony. It is not surprising, therefore, that desegregation has often led to educational reforms within school districts.

IV: Educational Reform and Desegregation

Desegregation plans have been a leading source of educational innovation during the past two decades. As one researcher concludes, "There is probably more active educational rethinking and searching for new approaches in desegregated schools than in any other group of American schools."[39] Almost all major desegregation orders since 1980 have included educational changes as part of the remedy.

The goal of achieving racial equity in a school system has produced development of a wide array of new educational approaches ranging from magnet schools to new instructional strategies and curricular changes. New desegregation plans often were occasions for creation of new grade structures and usually involved some retraining of teachers. Sophisticated school administrators have often used the advent of the major reorganization involved in a desegregation plan to build public support for reforms that they had been unable to accomplish earlier. The experience shows that desegregation is not a barrier to educational change but, to the contrary, often provides the occasion for it. The federal Emergency School Aid Act in the 1970s and the current magnet school program were explicit congressional recognitions of these linkages, which have become even more common since the Supreme Court's decision in *Milliken v. Bradley*, 433 U.S. 266 (1976) ("*Milliken II*"). As the preceding sections have demonstrated, a school district

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[39] M. WEINBERG, MINORITY STUDENTS: A RESEARCH APPRAISAL (Washington, D.C.: National Institute of Education, 1977), p. 329.

determined to "eliminate segregation root and branch" will consciously choose to implement innovative teaching techniques, such as cooperative learning groups, to improve student achievement and increase racial harmony. Magnet schooling, a major educational reform of the last two decades, was first developed as a desegregative tool.[40]

The largest review to date of published knowledge and interviews with experts was commissioned by the Ford Foundation and carried out at Duke and Vanderbilt Universities. One of the books which came out of that effort noted that major educational reforms commonly follow school desegregation: "Based on reports from observers around the country it appears that desegregation often leads to curricular changes, more teacher training, and new programs that have positive influences on student learning and academic performance."[41] Reform may be easier after desegregation because there is greater perceived need for change. Also, the reassignment of teachers and students, in response to desegregation decrees, can break up entrenched centers of resistance to change. The National Research Council concluded, in a study of the narrowing achievement gap between black and white students, that the combined effects of school desegregation and reforms opening educational opportunities to minority students presented "a challenge to commentators who judge that these programs failed."[42] A major study of long-term trends in achievement shows that the national gap between black and white students fell following the implementation of desegregation and federal compensatory

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[40] M.H. Metz, *Magnet Schools and the Reform of Public Schooling*, in W.L. BOYD & H.J. WALBERG (EDS.), CHOICE IN EDUCATION: POTENTIAL AND PROBLEMS (Berkeley, Cal.: McCutchan, 1990)

[41] HAWLEY, *ET AL.*, 1983, *op cit.*, p. 12.

[42] JAYNES & WILLIAMS, 1989 *op cit.*, p. 352.

education reforms in the 1960s. There were particularly striking gains for black students in the South.[43]

Planning for educational reform without considering racial issues can be self-defeating: "Avoiding discussion of race and of how school policy may affect blacks differently than whites results in blacks having severely restricted access to school resources such as untracked remediation, enrichment activities, advanced reading groups, and various privileges that make school life enjoyable."[44] Alert teachers and administrators in desegregated schools, especially those serving students of varied social classes or students entering with widely scattered skill levels, will be pushed to look for innovative, reforming, approaches to teaching. One study describes how frustrated southern teachers in newly desegregated schools in one district gradually learned to understand and then to teach children the varied ways in which members of the different social groups used language.[45] Another study reports that teachers of different races informally educated each other about culturally based learning patterns among students and effective responses to them.[46]

Many large urban districts, as well as smaller systems, have used magnet schools as one component of desegregation, emphasizing educational innovation, choice, and racial diversity

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[43] D. KORETZ, TRENDS IN EDUCATIONAL ATTAINMENT (Washington, D.C.: Congressional Budget Office, 1986).

[44] J. Goetz & E. Breneman, *Desegregation and Black Students' Experiences in Two Rural Southern Elementary Schools*, ELEMENTARY SCHOOL JOURNAL, 88:500 (1988).

[45] S.B. HEATH, WAYS WITH WORDS: LANGUAGE, WORK AND LIFE IN COMMUNITIES AND CLASSROOMS (New York: Cambridge University Press, 1983).

[46] M.H. METZ, DIFFERENT BY DESIGN: THE CONTEXT AND CHARACTER OF THREE MAGNET SCHOOLS (New York: Routledge, 1986).

as basic goals. Magnet schools, which have often been designed as part of a desegregation plan, have proven in some cases to be both a successful desegregative tool (when used on a large scale) and a significant source of educational enrichment for their students.[47] Some magnets have been designed to emphasize performing arts, non-traditional teaching methods concentrating on individual instruction, open education and resource centers, and instruction in specific subjects.[48] If not designed with integration as a basic part of the goals, magnets can deliver innovations primarily to the most privileged local students and produce more stratified school districts.[49] It seems clear from the magnet experience that, far from being mutually exclusive, racial integration, quality education, and expanded educational choice, can actually be complementary.

What is clear from the research summarized above is that desegregation is as much a school-district led process as a judicially controlled one. Desegregation creates possibilities and can provide the opportunity for reform and, sometimes, new resources for reform, but school authorities must make decisions to create a school system which promotes equal opportunities for students of all races. By exploring possibilities for educational innovation and racial harmony, they can further the

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[47] C. Rossell, *What Is Attractive About Magnet Schools?*, URBAN EDUCATION 14 (April 1985); C. ROSSELL AND R. CLARKE, THE CARROT OR THE STICK IN SCHOOL DESEGREGATION POLICY? (Washington, D.C.: National Institute of Education, 1987); METZ, 1990, *op cit.*

[48] METZ, 1986, *op cit.*; METZ, 1990, *op cit.*

[49] J. SCHOFIELD, BLACK AND WHITE IN SCHOOL: TRUST, TENSION, OR TOLERANCE? (New York: Praeger, 1982); J. Rosenbaum and S. Presser, *Voluntary Racial Integration in a Magnet School*, SCHOOL REVIEW 86(2):156-186 (February 1978).

process of desegregation; by failing to capitalize on possibilities for positive change, they can derail or postpone the process.[50]

V: Conclusion

Desegregation orders change established patterns of behavior and raise new expectations of a school district. Yet as research of the past three decades has shown, school districts can respond to these changes in a variety of ways. School districts who adopt desegregation in good faith are able to use it as an opportunity to increase the achievement of their students, promote racial harmony in the classroom and the community, experiment with innovative educational reforms, and influence integrated housing patterns. On the other hand, a weak or inadequate plan or local officials opposed to the process of desegregation can resegregate students within the schools, cling to established ways of teaching, speed neighborhood resegregation, foster interracial tensions within a desegregated school, or create racially identifiable schools that lack key advantages of desegregation. With appropriate plans, persistence over time in achieving complex and interdependent changes, and recognition of the new opportunities for educational improvements, desegregation can produce lasting changes with benefits for all students and the community as a whole.

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[50] B. HARE & D.U. LEVINE, TOWARD EFFECTIVE DESEGREGATED SCHOOLS: A MONOGRAPH PREPARED FOR THE UNITED STATES DEPARTMENT OF EDUCATION (Washington, D.C.: National Institute of Education, 1984).

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